RECORD, CASE NO. 14964.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM NO. ~~1490~~. 1008

CLYDE MATTOX, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED JANUARY 14, 1892.

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1 THE UNITED STATES OF AMERICA, *District of Kansas, ss:*

In the district court of the said United States, in and for the said district, September term, 1891.

THE UNITED STATES OF AMERICA, *vs.* CLYDE MATTOX (WHOSE MORE FULL CHRISTIAN name is unknown).	Indictment for murder.

At the term of the district court of the United States of America in and for said district of Kansas, begun and held at Wichita, in said district, on the seventh day of September, in the year of our Lord one thousand eight hundred and ninety-one, the grand jurors of the United States of America, duly impanelled, sworn, and charged to inquire of offenses committed within that part of the Indian Territory lying north of the Canadian River and east of Texas and the one hundredth meridian, not set apart and occupied by the Cherokee, Creek, and Seminole Indian tribes, upon their oaths do find and present that Clyde Mattox (whose more full Christian name is to the grand jurors aforesaid unknown), late of that part of the public domain acquired by the United States of America by the act of Congress approved March 2d, 1889, commonly known as Oklahoma, and being a part of the district of Kansas aforesaid, on or about the 12th day of December, in the year of our Lord one thousand eight hundred and eighty-nine, at that part of the district of Kansas aforesaid, the same being a place and district of country under the exclusive jurisdiction of the United States, and within the exclusive jurisdiction of this court, with

2 force and arms, in and upon the body of one John Mullen, then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault; and that the said Clyde Mattox, with a certain revolving pistol then and there charged with gunpowder and leaden bullets, which said pistol he, the said Clyde Mattox, in his hand then and there had and held, then and there feloniously, wilfully, and of his malice aforethought, did discharge and shoot off, to, against, and upon the said John Mullen, and that the said Clyde Mattox with the leaden bullet aforesaid, out of the pistol aforesaid, then and there, by force of the gunpowder aforesaid, by the said Clyde Mattox discharged and shot off as aforesaid, then and there feloniously, wilfully, and of his malice aforethought, did strike, penetrate, and wound him, the said John Mullen, in and upon the right breast of him, the said John Mullen, giving to him, the said John Mullen, then and there, with the leaden bullet aforesaid, so as aforesaid discharged and shot out of the pistol aforesaid, by the said Clyde Mattox in and upon the right breast of him, the said John Mullen, one mortal wound of the depth of eight inches and of the breadth of half an inch, of which said mortal wound he, said John Mullen, then and there died. And so the jurors aforesaid, upon their oaths aforesaid, do say that the said Clyde Mattox him the said John Mullen, in the manner and by the means aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

Second count.

And the grand jurors aforesaid, upon their oaths aforesaid, duly
3 impanelled, sworn and charged to inquire of offenses committed within that part of the Indian Territory lying north of the Canadian River, and east of Texas and the one hundredth meridian, not set apart and occupied by the Cherokee, Creek, and Seminole Indian tribes, upon their oaths do find and present that Clyde Mattox (whose more full Christian name is to the grand jurors aforesaid unknown), late of that part of the public domain acquired by the United States of America by the act of Congress approved March 2d, 1889, commonly known as Oklahoma, and being a part of the district of Kansas aforesaid, on or about the 12th day of December, in the year of our Lord one thousand eight hundred and eighty-nine, at that part of the district of Kansas aforesaid, the same being a place and district of country under the exclusive jurisdiction of the United States, and within the exclusive jurisdiction of this court with force and arms, in and upon the body of one John Mullen then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault; and that the said Clyde Mattox, with a certain revolving pistol charged with gunpowder and leaden bullets, which said pistol he the said Clyde Mattox in his hand then and there had and held, then and there feloniously, wilfully, and of his malice aforethought, did discharge and shoot off, to, against, and upon the said John Mullen and that the said Clyde Mattox, with the leaden bullet aforesaid, out of the pistol aforesaid, then and there by force of the gunpowder aforesaid, by the said Clyde Mattox discharged and shot off as aforesaid, then and there feloniously, wilfully, and of his malice aforethought, did strike, penetrate, and wound him, the said John Mullen, in and upon the back of him, the said John Mullen, giving to him the said John Mullen, then and there, with the leaden bullets aforesaid, so as aforesaid discharged and shot out of
4 the pistol aforesaid, by the said Clyde Mattox in and upon the back of him, the said John Mullen, one mortal wound of the depth of nine inches and of the breadth of half an inch; of which said mortal wound he, the said John Mullen, then and there died. And so the jurors aforesaid, upon their oaths aforesaid, do say that the said Clyde Mattox him the said John Mullen, in the manner and by the means aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

Third count.

And the grand jurors aforesaid, upon their oaths aforesaid, duly impanelled, sworn, and charged to inquire of offenses committed within that part of the Indian Territory lying north of the Canadian River and east of Texas and the one-hundredth meridian not set apart and occupied by the Cherokee, Creek, and Seminole Indian tribes, upon their oaths do find and present that Clyde Mattox (whose more full Christian name is to the grand jurors aforesaid unknown), late of that part of the public domain acquired by the United States of America by the act of Congress approved March 2d, 1889, commonly known as Oklahoma, and being a part of the district of Kansas aforesaid, on or about the 12th day of December, in the year of our Lord one thousand eight hundred and eighty-nine, at that part of the district of Kansas aforesaid, the same being a place and district of

country under the exclusive jurisdiction of the United States and within the exclusive jurisdiction of this court, with force and arms in and upon the body of one John Mullen then and there being, feloniously,
5 wilfully, and of his malice aforethought, did make an assault, and that the said Clyde Mattox, with a certain revolving pistol then and there charged with gunpowder and leaden bullets, which said pistol he, the said Clyde Mattox, in his hand then and there had and held, then and there feloniously, wilfully, and of his malice aforethought did discharge and shoot off, to, against, and upon the said John Mullen, and that the said Clyde Mattox, with the leaden bullet aforesaid, out of the pistol aforesaid, then and there, by force of the gunpowder aforesaid, by the said Clyde Mattox discharged and shot off as aforesaid, then and there feloniously, wilfully, and of his malice aforethought did strike, penetrate, and wound him, the said John Mullen, in and upon the abdomen of him, the said John Mullen, giving to him, the said John Mullen, then and there, with the leaden bullet aforesaid, so as aforesaid discharged and shot out of the pistol aforesaid by the said Clyde Mattox in and upon the abdomen of him, the said John Mullen, one mortal wound of the depth of nine inches and of the breadth of half an inch, of which said mortal wound he, the said John Mullen, then and there died; and so the jurors aforesaid, upon their oaths aforesaid, do say that the said Clyde Mattox, him, the said John Mullen, in the manner and by the means aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

P. L. SOPER,
Assistant U. S. Attorney, District of Kansas.

(Endorsed:) No. 900. United States vs. Clyde Mattox. Murder. A true bill. J. W. Hamilton, foreman. Witnesses: Dr. W. R. Thompson, Thomas Whitman, Charity Whitman, Laura Walker, Joe Watson,
6 Lizzie Walls, Elisha Hopkins, Nancy Bates, Lizzie Rowley, Oklahoma City; Geo. L. Walker, Thomas Roberts, Nick Brown, Capt. D. F. Stiles, C. W. Price, T. J. Woodson, Will. R. Walter, J. N. Haynes, Martin Bate, M. Woodson, Robert Williams, Morgan Wright, George Thornton, J. R. Jacobs, J. B. Koonce, H. E. Stanley, Joe Morris, John Naron, W. N. Naron. Filed Sept. 25th, 1891. J. C. Wilson, clerk, by J. F. Shearman, D. C.

7 U. S. OF AMERICA, *vs.* CLYDE MATTOX. } Indictment for murder.

Comes now the defendant and demurs to the indictment herein and each count thereof, because the same is insufficient in law to require him to answer, and because the indictment and each count thereof is uncertain and informal.

Wherefore defendant prays judgement that the same be quashed.

JOHNSON & HAWARD,
and WILSON & MCMECHAN,
Attorney for defendant.

(Endorsed:) 900. U. S. of America vs. Clyde Mattox, demurrer. Filed Oct. 5th, 1891. J. C. Wilson, clerk, by J. F. Shearman, D. C.

8 UNITED STATES OF AMERICA,
District of Kansas, ss:

At a term of the district court of the United States of America, for the district of Kansas, begun and held at the city of Wichita, in said district, on Monday, the 21st day of September, 1891, proceedings were had and appear of record in words and figures following, to wit:

MONDAY, *October 5th*, 1891.

UNITED STATES, *vs.* CLYDE MATTOX. } 900. Murder.

Now comes as well the plaintiff, by J. W. Ady, U. S. atty., as the said defendant by J. W. Johnson and T. F. McMechan, his attorneys, and said defendant, being arraigned on the indictment herein, pleads not guilty hereto and to try the matters submitted to them in the above cause comes the following jury, to wit: V. S. Musil, John B. Dickey, R. J. Herrin, J. A. Scandrett, F. B. Hoyt, D. J. Davis, A. W. Groves, A. E. Snyder, Max Lamont, B. F. McGill, Samuel Booth, James P. Hall, who, being duly empanelled and sworn, the trial of the cause is proceeded with, and the hour of adjournment having arrived further consideration of this cause is postponed until to-morrow.

9 MONDAY, *October 5th*, 1891.

THE UNITED STATES *vs.* CLYDE MATTOX. }

Upon the recommendation of the United States attorney, it appearing to the court that the services of a stenographer are required in this case, it is now ordered by the court that H. B. Tracey be appointed stenographer to report the proceedings in this case at the September term, 1891.

JOHN A. RINER,
Judge.

(Endorsed:) 900. U. S. vs. Clyde Mattox. Order. Filed Oct. 5th, 1891. J. C. Wilson, clerk. By J. F. Shearman, D. C. C.

10 UNITED STATES OF AMERICA,
District of Kansas, ss:

At a term of the district court of the United States of America for the district of Kansas, begun and held at the city of Wichita, in said district, on Monday, the 21st day of September, 1891, proceedings were had and appear of record in words and figures following, to wit:

TUESDAY, *October 6th*, 1891.

UNITED STATES *vs.* CLYDE MATTOX. } 900. Murder.

Now come the parties same as before, and the jury being called and answering to their names the trial of the cause is proceeded with, and the hour of adjou*rr*ment having arrived further consideration of this cause is postponed until to-morrow.

11 UNITED STATES OF AMERICA,
District of Kansas, ss:

At a term of the district court of the United States of America for the district of Kansas, begun and held at the city of Wichita, in said district, on Monday, the 21st day of September, 1891, proceedings were had and appear of record in words and figures following, to wit:

WEDNESDAY, *October 7th*, 1891.

UNITED STATES
vs.
CLYDE MATTOX. } 900. Murder.

Now come the parties same as before, the jury being called, answering to their names, the trial of the cause is proceeded with, and the jury, having heard the evidence, arguments of counsel, and instructions of the court, retire with their sworn bailiff.

THURSDAY, *October 8th*, 1891.

UNITED STATES
vs.
CLYDE MATTOX. } 900. Murder.

Ordered by the court, that the marshal cause to be furnished one hundred and sixty-nine meals for the jury and bailiff in the above-entitled cause.

12 UNITED STATES OF AMERICA,
District of Kansas, ss:

At a term of the district court of the United States of America for the district of Kansas, begun and held at the city of Wichita, in said district, on Monday, the 21st day of September, 1891, proceedings were had and appear of record in words and figures following, to wit:

THURSDAY, *October 8th*, 1891.

UNITED STATES
vs.
CLYDE MATTOX. } 900. Murder.

Now, on this day come the parties same as before, and the jury heretofore duly empaneled in this case return into open court, and, through their foreman, present the following verdict, to wit:

"We, the jury in the above-entitled cause, duly empaneled and sworn, upon our oaths find the defendant, Clyde Mattox, guilty as charged in the indictment." J. P. Hall, foreman.

13 UNITED STATES OF AMERICA,
District of Kansas, ss:

UNITED STATES OF AMERICA
vs.
CLYDE MATTOX. } Indictment.—Murder.

Motion for new trial.

Comes now the defendant in the above-entitled cause and moves the court to set aside the verdict herein and grant a new trial in this case, and assigns as reasons therefor the following:

1st. The verdict is not sustained by sufficient evidence.

2d. The verdict is against the evidence.

3d. The court erred in the rejection of the testimony of the witnesses, Dr. Samuel Graham and Mrs. S. W. Hatch, offered on the part of the defendant, in refusing to permit the witness Graham to answer the following question propounded by the defendant, to wit: "Did or did not John Mullin, in your presence and at that time say, in reply to a question of Mrs. Hatch, 'I know your son, Clyde Mattox, and he did not shoot me. I saw the parties who shot me, and he was not one of them.'" And in refusing to permit the witness, Mrs. S. W. Hatch, to answer the following question propounded by the defendant: "State whether or not John Mullin, on the morning of his death and while you were present with him with the witness, Dr. Graham, and after the doctor had informed him that all the chances of life were against him, in answer to a question propounded by you, say: 'I saw the parties who shot me, and I did not know them. I know your son, Clyde Mattox, and he was not one of the parties who shot me.'"

4th. Surprise to the defendant in testimony offered on the part of the Government, to wit, the testimony of Charity Whitman, wherein she testified that she was present at the shooting of the deceased and there
14 recognized this defendant as one of the parties who did the shooting, whereas the said Charity Whitman was sworn and testified as a witness on the part of the Government in the preliminary examination of the defendant in Oklahoma City, I. T., in the month of Feb., 1890, before Wm. A. Monroe, U. S. commissioner, at which time the said Charity Whitman testified that she was present at such shooting and saw the shooting and the parties who did it, and that she could not recognize this defendant and did not recognize him as one of the parties who did such shooting. Whereupon the defendant immediately made an application to the court for a subpœna for Wm. A. Monroe as a witness in his behalf, the said Wm. A. Monroe being U. S. commissioner before whom said preliminary examination was held. The court granted said application and caused a subpœna to be issued for said Monroe, but stated that said cause would not be delayed for his appearance. Said Monroe was not reached and did not appear until after the case was closed and submitted to the jury. If permitted to obtain the testimony of said Monroe, the said Monroe would have testified that said Charity Whitman appeared and testified as a witness before him in the preliminary trial of this case, and then and there testified that she did not recognize either of the parties who did such shooting, and did not recognize this defendant, Clyde Mattox, as one of the parties who did such shooting.

5th. The court erred in the admission of testimony against and over the objection of the defendant.

6th. Misconduct of Douglas V. Donnelly, the bailiff in charge of the jury; said misconduct consisted of this: That after the jury had been charged by the court and after they had retired to consider of their verdict and while they were deliberating of their verdict, the said
15 bailiff made remarks in the presence and hearing of the jury to the great injury and prejudice of this defendant, said remarks being as follows: "After you fellows get through with this case it will be tried again down there. Thompson has poison in a bottle that them fellows tried to give him." And at another time the said bailiff referring to the defendant, Clyde Mattox, in the presence and hearing of the jury and while they were deliberating of their verdict, said "this is the third fellow he has killed."

7th. Misconduct of the bailiff, Douglas V. Donnelly, while in charge of the jury and while the jury were deliberating of their verdict in allowing said jury or some or one of them to purchase and take to the jury room a newspaper printed in the city of Wichita and known as The Wichita Daily Eagle, of the date of Thursday morning, October 8th, 1891; the said newspaper being purchased and taken to the jury room by a member of the jury contained a comment upon the case upon which the jury was then deliberating.

8th. Improper conduct of the jury in procuring to be introduced into their room while they were deliberating of their verdict, on this case, and having read in their presence and hearing while so deliberating, the comments of the Wichita Daily Eagle, a newspaper printed and published in the city of Wichita, Kansas, in its issue of Thursday morning, October 8, 1891. Said comments of said newspaper introduced into the jury room and read by them and in their presence and hearing were as follows: "The destiny of Clyde Mattox is now in the hands of the twelve citizens of Kansas composing the jury in this case. If he is not found guilty of murder he will be a lucky man, for the evidence against him was very strong or at least, appeared to be to an outsider. The case was given to the jury at noon yesterday and it was expected that their deliberation would not last an hour before they would return a verdict. The hour passed
16 and nine more of them with it, and still a verdict was not reached by 10:30 last night, when the jury adjourned and went to their rooms at the Carey. Col. Johnson, of Oklahoma City, defended him, and made an excellent speech in his behalf to the jury. Mr. Ady also made a fine speech and one that was full of argument and replete with the details of the crime committed as gathered from statements of witnesses. The lawyers who were present and the court officers also agree that it was one of the best and most logical speeches Mr. Ady every made in this court. It was so strong that the friends of Mattox gave up all hope of any result but conviction. Judge Riner's instructions to the jury were very clear and impartial, and required nearly a half hour for him to read them. When the jury filed out Mattox seemed to be the most unconcerned man in the room. His mother was very pale and here face indicated that she had but very little hope. She is certainly deserving of a good deal of credit for she has stuck by her son, as only a mother can, through all his trials and difficulties, and this is not the first one by any means, for Clyde has been

tried for his life once before. He is a youthful looking man, of light build, a beardless face, and a nervous disposition. The crime for which he has just been tried is the killing of a colored man in Oklahoma City over two years ago. Nobody saw him do the killing and the evidence against him is purely circumstantial but very strong, it is claimed, by those who heard all the testimony."

9th. The court erred in the admission of testimony offered on the part of the Government and admitted over the objection the defendant.

Defendant files herewith in support of his allegations here made affidavits marked Exhibit A & B & C and D and a
17 copy of said newspaper, The Wichita Daily Eagle, marked Exhibit D.

J. W. JOHNSON & WILSON & MCMECHAN,
Attorneys for Defendant.

(Endorsed:) 900. U. S. of America vs. Clyde Mattox. Motion for new trial. Filed Oct. 9th, 1891. J. C. Wilson, clerk. By J. F. Shearman, D. C. J. W. Johnson & Wilson & McMechan.

18 In the district court of the United States for the district of Kansas.

U. S. OF AMERICA
vs.
CLYDE MATTOX. } Indictment, murder.

Motion in arrest of judgment.

Comes now the defendant herein, by his attorneys, and moves the court to arrest the judgment herein for the following reasons, to wit:

1st. Because the court has no jurisdiction of the cause of action.

2d. Because the grand jury had no legal authority to inquire into the offense charged, for the reason that it was not within the jurisdiction of the court.

3d. That the facts stated in the indictment do not constitute a public offense.

J. W. JOHNSON and
WILSON & MCMECHAN,
Attys. for Deft.

(Endorsed:) 900. U. S. of America vs. Clyde Mattox. Motion in arrest of judgment. Filed Oct. 9th, 1891. J. C. Wilson, clerk. By J. F. Shearman, D. C. Johnson & Wilson & McMechan.

19 UNITED STATES OF AMERICA, *District of Kansas, ss:*

At a term of the district court of the United States of America for the district of Kansas, begun and held at the city of Wichita, in said district, on Monday, the 21st day of September, 1891, proceedings were had, and appear of record, in words and figures following, to wit:

FRIDAY, *October 9th*, 1891.

UNITED STATES
vs.
CLYDE MATTOX. } 900. Murder.

Now comes the parties same as before, and the motions for a new trial and in arrest of judgment heretofore filed herein coming on to be heard

and being argued by counsel, are by the court overruled, to which ruling of the court the defendant, by his attorney, at the time duly excepts. Thereupon the court, on the verdict of guilty heretofore rendered herein, passed sentence upon said defendant as follows: Having first asked said defendant if he had any reason to give why sentence of the court should not be passed upon him, and he having replied that he had none, it is therefore considered, ordered, and adjudged, and the sentence of the court is, that you, the said Clyde Mattox, be confined in the Sedgwick County jail, or some other suitable place of confinement within the district of Kansas, until Thursday, January 14th, 1892, and on that day between the hours of 10 a. m. and 4 p. m. that you be taken by the marshal of said district of Kansas from said jail to some suitable place in said county of Sedgwick, in the district of Kansas, and that you then and there be hanged by the neck until you are dead.

20 UNITED STATES OF AMERICA, *District of Kansas, ss:*

I, J. C. Wilson, clerk of the district court of the United States of America for the district of Kansas, do hereby certify the foregoing to be a true, full, and perfect copy of the proceedings of record in said court, as appears from the files and record entries in Journal No. 2 "Wichita," in case No. 900, The United States of America vs. Clyde Mattox, charged with murder.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Topeka, in said district of Kansas, this 8th day of Dec., A. D. 1891.

[SEAL.] J. C. WILSON,
Clerk.

21 THE UNITED STATES
vs.
CLYDE MATTOX. } No. 900.

Copy of bill of exceptions.

22 In the district court of the United States, district of Kansas, southern division. September term, 1891.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CLYDE MATTOX, DEFENDANT.

Appearances: For the prosecution, Hon. Joseph Ady; for the defense, Col. J. W. Johnson and T. F. McMechan.

Statement of the case to the jury by Mr. Ady, for the prosecution.

LAURA WALKER, a witness for the prosecution, being first duly sworn, testifies as follows:

Direct examination by Mr. ADY:

Q. Is your name Laura Walker?
A. Yes, sir.
Q. Where do you live?

A. In Okl'homa City.
Q. Since how long have you lived there?
A. I have lived there nearly three years.
Q. Went down there about the time of the opening?
23 A. In June, after the opening.
Q. Did you know John Mullin in his lifetime?
A. Yes, sir; I did.
Q. How old a man was he, about, when he died?
A. Well, I don't realize as I ever asked him. I took him to be a middle-aged man.
Q. Good health?
A. Yes; good, straight, large man—healthy.
Q. Were you present when he was killed?
A. I was.
Q. Where was he at the time?
A. He was standing in my door.
Q. What time in the evening was it?
A. After dark.
Q. Do you know about what time?
A. No, sir; I didn't have any timepiece in the house, but lots of people heard the pistol; they all said it was about nine o'clock.
Q. Never mind that.
Q. It was after night?
A. Yes, sir.
Q. What month was it?
A. December.
Q. How many years ago?
A. This last gone December one year ago, it was done.
Q. Where was you when John Mullin was shot?
24 A. I rized up from the stove when the men run over to shoot, shortly after he went to the door. I looked for a light, and the time I rized up to step around to the door they commenced to shoot, two fires, one right after the other. That time I simply hollered, "Please, gentlemen, don't shoot me!" I stepped across the house as they both run.
Q. You was in the house?
A. Yes, sir.
Q. Which end of the house was this door in that Mullin was standing in?
A. In the north end.
Q. What is the name of that street that runs in front?
A. Choctaw.
Q. Which way was John facing when he was shot?
A. North.
Q. How was he standing at the time?
A. The door opened in the north; he went to the door and opened the door. Right arm [indicates] was up on the door and the other hanging down.
Q. Right arm in the door and the left one hanging down?
A. Yes, sir.
Q. Did John have weapons at that time?
A. Not a thing but just his hands.
Q. What was the first thing you heard that attracted your attention?

A. That woman hollering and screaming at the top of her voice.

Q. Where was the woman screaming?

A. She was just a piece above my house; about in the next block coming from church.

Q. Where was she, in the street?

A. Yes, sir.

25 Q. How did John happen to go to the door?

A. Because after she hollered he asked her what was the matter. She says, "Some white men are out here after us."

Q. Was he at the door before the hollowing?

A. No, sir; he was at the stove.

Q. What did he say?

A. He says, "What are you got them women screaming that way in the streets for?" The gentlemen out there says, "What in hell you've got to do with it, you black son of a bitch?" John says, "I've got a heap to do with it," and he run to the door.

Q. Who run to the door?

A. Them two gentlemen in the dark; they come a runnin'.

Q. What did they do?

A. Both come in and said to Tom by that time—with Tom—Tom Whitman had got there. He says, "Is this you, Joe?" He says, "Yes, this is me." Tom says, "Yes." They said, "You know us." He says, "Yes." He says, "We know you, too, and this fellow is giving us a lot of head, and we a'n't going to take it; we's officers," and that time he shot.

Q. How many times did they shoot?

A. They shot three times.

Q. Do you know who that was, says "Is this you, Joe?" Did you know?

A. No, sir; I didn't see him; just heard the voice through the walls of the house at that time; I heard the balls; I was just getting up from the stove to go out and see them.

Q. Who was it you said he said that to?

A. To Tom Whitman. He called him Joe, and Tom answered——

Q. What was it Tom said in reply?

A. He said, "Hello, Joe, is this you?" Tom says, "Yes." He says, "You know us, don't you?" Tom says, "Yes, I know you both." This front one says, "This fellow is giving us a lot of head;" and by that time they fired almost into one.

26 Q. What did they do after they got done shooting?

A. Both whirled and run.

Q. Did Mullin shoot any?

A. No, sir.

Q. What became of him?

A. He fell or lay back. They both took right down the street as hard as they could go a runnin'.

Q. How long did John Mullin live after that?

A. Until the next day, evenin', about one o'clock, as near as I can come at it.

Q. Until the next afternoon at one o'clock, you mean?

A. Yes, sir.

Q. Did you say that man said to Tom that they were officers?

A. Yes, sir.
Q. You said that man said to Tom that they was officers?
A. Yes, sir.
Q. Where was it that John Mullin died?
A. He died right there in the house.
Q. In Oklahoma city?
A. Yes, sir.
Q. Did you know Clyde Mattox at that time?
A. No, sir.
Q. Did you know the other man?
A. Didn't know neither one of them.
Q. Never had seen them or heard them talk?
A. I had saw them in the day; at least I was told——
ADY. Never mind that.
Mr. JOHNSON. Don't tell anything you——
Mr. ADY. That will do.

Cross-examination of Laura Walker by Mr. JOHNSON:

Q. Now, who else was in this room where you and Mullin were at that time, if anybody?
27 A. No person, but a little grandchild of mine that stayed with me; no other person present but just me and him; the child was on the bed.
Q. Where did you say that the child was at the time of this shooting?
A. Lying on the bed.
Q. This door way, you say, in which John stood, was on the north side of the house?
A. It was in the north corner.
Q. Do you know what the size of that room or house was, auntie, about?
A. It was thirteen by twelve.
Q. About twelve by thirteen?
A. Yes, sir.
Q. Was there light in the house at this time?
A. There was.
Q. What kind of a light?
A. A lamp set on the table opposite the door with a globe.
Q. Was the door open when John went to it, or did he open the door?
A. It was shut. He got up and opened it and spoke to the men.
Q. Where was the door with reference to the front of the house?
A. About the center.
Q. Do you remember the character of the night, whether it was a light or dark night outside?
A. It was a starry; the moon wasn't shining.
Q. Is that your remembrance, that it was starry?
A. Yes; I remember well, for at prayer meeting I went outside and listened to the singing, and came in before the shooting.
Q. At the time John went to the door what was you doing?
28 A. When he first went to the door I was sittin' at the stove until the fight, and they come runnin'—I rized up.
Q. Where were you sitting with reference to the doorway?

A. I was sittin' at the far edge of the stove, and the stove was'nt far from the door.

Q. Was the stove, as you entered the room—would the stove be at your right or left?

A. At my left going in the room; going out, to the right.

Q. The stove would be east of the door?

A. Yes, sir.

Q. Which way did the door open, to the inside or to the outside?

A. Towards the stove.

Q. And you were sitting back there close to the stove?

A. When he first got up to go to the door I was setting at the stove; he got up right to the door; I rized up.

Q. Stood there?

A. I stood there until the first two fires.

Q. Then what did you do?

A. Moved across the house to the table on the west side. That is all.

THOMAS WHITMAN, a witness on behalf of the prosecution, being first duly sworn, testifies as follows:

Direct examination of Mr. ADY:

Q. Is your name Thomas Whitman?

A. Yes, sir.

Q. Where do you live?

A. Oklahoma city.

Q. How long have you lived down there?

29 A. Ever since the same week it opened.

Q. Know Laura Walker?

A. Yes, sir.

Q. How near did you live to her house, in December?

A. I lived the next house.

Q. Which way from it?

A. East.

Q. What did your family consist of at that time?

A. I had a daughter.

Q. A wife?

A. Yes, sir.

Q. Do you know Clyde Mattox?

A. Yes, sir.

Q. When did you first get acquainted with Clyde?

A. Ever since I have been in the country.

Q. Do you remember the killing of John Mullin?

A. Yes, sir.

Q. How long had you known Clyde before that time?

A. About three months, I guess.

Q. Where did you first get acquainted with him, do you remember, or find out who he was?

A. I have been acquainted with him ever since I have been there on the streets.

Q. Did Clyde have any business at that time?

A. No, he don't. When I first got acquainted with him?

Q. Yes.
A. I don't think he had then; he had been——
Q. Did he have any business at the time Mullen was killed?
A. Yes, sir.
Q. What was it?
30 A. He was deputy, I suppose; he was acting deputy.
Q. Deputy what?
A. Marshal.
Q. Town marshal?
A. Yes, sir.
Q. Deputy marshal of the city of Oklahoma?
A. Yes, sir.
Q. Had you ever been with Clyde?
A. That day I was.
Q. What day?
A. The day he killed John.
Q. Where?
A. Right across the street from where he shot John at.
Q. What were you doing?
A. He had a old man arrested; I wasn't doing anything that day.
Q. Who was the man he had arrested?
A. I don't know the old gentleman; he was a Bohemian.
Q. You don't know his name?
A. No, sir.
Q. How did you happen to be where Clyde was that day?
A. It was not far from my house; about five blocks from me, I guess.
Q. You mean that is where the man was arrested?
A. Yes, sir.
Q. Did you have any talk with Clyde that day?
A. No, sir. He did tell me——
Mr. JOHNSON. I object unless it has reference to this matter.
31 (Objection overruled. Defendant excepts.)
Q. Did you have a talk with him that day?
A. Yes.
Q. Any talk any other day prior?
A. Yes, sir.
Q. In that talk that day did he call you by any name?
A. No, sir; he didn't.
Q. I mean when the old man was arrested.
A. No, sir.
Q. Were you present when John Mullin was shot?
A. Yes, sir.
Q. When was it?
A. It was in December, I think.
Q. What year?
A. I think 89.
Q. How long ago; how many Decembers ago?
A. Well, it was——
Q. First one after you were there?
A. Yes, sir.
Q. Who else was present when John was shot

A. Well, my wife; she had her hand on this shoulder [indicates] of mine.

Q. Which shoulder?

A. This one [indicating].

Q. The left?

A. Yes, sir.

Q. What is her name?

A. Charity.

Q. Did you see any one else there?

32 A. No, sir; I didn't.

Q. How long did you know John Mullin, about?

A. I don't know exactly; about three or four months; about four months, I think.

Q. What sort of a man was he physically, healthy?

A. John was a healthy man.

Q. What first attracted your attention there that evening to any trouble there, if anything?

A. At what time?

Q. I say what first attracted your attention to it?

A. At night or that day?

Q. The night of the trouble.

A. Two women's cries in the street.

Q. Did you see the women?

A. No, sir.

Q. Did you know who they were?

A. Yes, sir.

Q. Who were they?

A. Lizzie Wells and Laura Hudson.

Q. Were they colored women?

A. Yes, sir.

Q. Did you know where they were on the street when they hollowed?

A. No, sir.

Q. What did you hear that attracted your attention?

A. They screamed—one of them.

Q. How far were they from your house?

A. They were just across the street, the house nearly facing mine.

Q. Where were you when you first heard the screaming?

A. Settin' in my house.

33 Q. Who was in there with you?

A. My wife.

Q. What did you do when you heard this cry?

A. I jumped up and ran out.

Q. When you got to the door what did you see?

A. I never seen anybody when I got to the door. In a short time Clyde and his partner came across the street and asked John, "what in hell he was hollowing at them across the street?" Clyde came across the street and asked John, "what in hell he was hollowing at him?" John told him he had no right to scare women in the dark, and Clyde told him to shut up and John told him he wouldn't do it, and Clyde put one foot on the door and stepped up and fired twice and the other man once.

Q. How much yard was there to that house?

A. About three feet.
Q. Was there a fence in front of the house?
A. Yes, sir.
Q. Where were these men when you first saw them?
A. Not quite to the gate.
Q. What did Clyde have to shoot with?
A. Revolver.
Q. Did you notice how John was standing when he was shot?
A. Yes, sir.
Q. Indicate to the jury how he was standing. Stand up.
A. The house was facing north. John stood this very way. When John was falling the other ball shot him right in there.
Q. Both young boys?
A. Yes, sir.
Q. Did you know who the other man was?
34 A. No, sir; I don't; I have seen him several times.
Q. How far was you standing from Clyde when you say he shot John Mullin?
A. I was standing pretty close to him; as close as that jury. I stopped outside the door; just that way [indicating]. He put one foot upon the door, like that.
Q. Are you sure that was Clyde?
A. Yes, sir.
Q. Did he speak to anyone except Mullin?
A. He spoke to me when he first got in the yard. Said "Hello, Joe," and struck me on the shoulder.
Q. What else did he say?
Mr. JOHNSON. Well, well ——
Q. Anything else?
A. He said, "I know you." I said, "Yes, I know you, too."
Q. Was that before or after the shooting?
A. Before the shooting.
Q. How near was your wife standing to you at that time?
A. She had her hand on my left shoulder.
Q. Which way from the door?
A. Facing north.
Q. Which way from you?
A. She was standing on the east side of me.
Q. Your wife was?
A. Yes, sir.
Q. You know about what time it was?
A. At night?
Q. Yes.
A. Between eight and nine o'clock; I don't know exactly; I think it was a quarter past nine when I went to jail.
35 Q. When you went to jail? What for?
Mr. JOHNSON. I object to that.
By the COURT. I don't see the materiality.
Q. State whether you went to jail for any offense.
A. Thornton carried me to jail to keep me out of the boys' way.
Q. Thornton?

A. Yes, sir.
Q. I want to know whether you was arrested for any crime?
A. No, sir.
Q. How many shots were fired?
A. Three.
Q. How many did Clyde fire?
A. Two.
Q. Which one fired first?
A. Clyde Mattox; twice.
Q. What did John Mullin do during the shooting?
A. Not a thing. The pistols was fired as fast as they could; John was falling; Clyde shot the last time; John was falling, and the other boy shot him right in there [indicates].
Q. Did you see John Mullin afterwards?
A. Not that night; the next morning.
Q. Did you see the wounds on his body?
A. Yes, sir.
Q. Where was he shot?
A. One ball went in the right arm; right in there, and one right in here, and the other right in his hip [indicates].
Q. How many times was he shot?
A. Three.
Q. Were you there when he died?
A. No, sir; I was in town.
36 Q. Did you see him after he was dead?
A. Yes; about five minutes.
Q. What time did he die?
A. About fifteen minutes past two o'clock.
Q. Was you any relation to John?
A. No, sir.
Q. What relation was you to Laura?
A. Her daughter is my wife.
Q. Where did you live prior to going to Oklahoma?
A. I stayed in Varginny; the year before going to Oklahoma, Fort Smith, Arkansas.

Cross-examination of Thomas Whitman by Mr. JOHNSON:

Q. How long did you say you had known Clyde before Mullin was shot?
A. I know him ever since he came to the country; ever since his——
Q. When did you come to the country first?
A. In June; the year it opened.
Q. How long do you say it was after you went there before you became acquainted with or knew Clyde?
A. It wasn't very long after that, because I got acquainted with him in a short time.
Q. Well, had you met him, how many times had you met Clyde or conversed with him prior to the night on which John was killed; that is, before that night?
A. I never had any talk with him at all before that day.
Q. That day was the first time you ever talked with him?

37 A. Yes, sir.

Q. Tell the jury how many times, according to the best of your judgment, you had seen Clyde before that night, at the time you say John was shot?

A. I could not tell, because I saw him nearly every day.

Q. What did you see him doing during these times?

A. Sometimes gambling and sometimes he wasn't.

Q. Sometimes what?

A. Sometimes gambling.

Q. Did you ever see him gamble?

A. Yes, sir.

Q. Are you certain?

A. Yes, sir.

Q. Where?

A. Right across from the depot.

Q. How many times, in your judgment, will you say you saw him gamble?

A. Not but one time.

Q. About when was that time?

A. I don't know what time that was.

Q. Give your best judgment.

A. I could not say what time it was.

Q. About when?

A. It was shortly after—about a month I guess before he killed John.

Q. Well, you think you saw him gamble during the month of November?

A. Yes, sir.

Q. What time in the day or night was it that you saw him gamble?

A. It was on Saturday; I don't know what time of day.

38 Q. Was it day or night time?

A. Day.

Q. Before or after noon?

A. I could not say; but I think it was before twelve o'clock.

Q. What do you say as to the time of day it was?

A. Before twelve o'clock, I think; I don't know.

Q. Can you tell who else was in that room at that time?

A. No, sir.

Q. Was there anybody else there?

A. Yes, sir.

Q. Other parties you knew?

A. I know Jack.

Q. Anybody besides Jack and Clyde?

A. No, sir.

Q. What game was it?

A. I don't know whether he was playing poker or what.

Q. That was about a month, you think, before. Had you ever seen him gambling on any other occasion at that place or any other place?

A. No, sir.

Q. You say you got acquainted with him soon after you came there?

A. Yes, sir.

Q. You came there in June; about what date was it you came there?

A. I don't know.
Q. First part of the month or the last?
A. It was in the middle of June, I suppose; I don't know.
Q. What is your judgment as to whether you learned to know who Clyde was during the month of June?
39 A. No, sir.
Q. When was it you first learned to know him, in July or Aug.?
A. I had been knowing Clyde ever since I had been there. I don't know what month it was in.
Q. How long had you been there before you knew Clyde; as to your judgment, how many weeks?
A. I could not say.
Q. Where did you first know him?
A. He was traveling up and down the street like any other gambler.
Q. Is it your judgment it was late in the month of July you first learned to know Clyde?
A. I didn't say.
Q. Saw him traveling up and down the street during the—was there a month's time after you went there that you didn't see Clyde?
A. I don't think there was.
Q. What do you say as to whether you saw him during the month of July?
A. I don't say.
Q. What do you say as to whether you saw him during the month of August?
A. It wasn't very long. I had come back from Wichita. I knew him after I went back home. He was there when I got back there.
Q. Did you ever know Clyde until after you came back from Wichita?
A. He was at home in Oklahoma City when I knew him.
Q. When you first knew him; did you know him before he came to Wichita?
40 A. No, sir.
Q. You knew him after he came back from Wichita? Tell the jury whether you saw this man during the month of July.
A. I don't say.
Q. What is your best recollection as to how long it was after you went there in June until you learned to know Clyde Mattox?
A. I believe it was in July; I wouldn't be positive.
Q. Give your best judgment. Do you know where it was when you first learned to know who he was?
A. It was on the corner of Maint St.
Q. Do you know what he was doing?
A. He and old man Hine's son were talking together.
Q. Talking together?
A. Yes, sir.
Q. And that was the first time you knew him?
A. Yes, sir.
Q. You think it was the month of July?
A. I think it was.

Q. How long a time was it after you first knew him up to the time of this shooting that you didn't see him? What was the longest time you didn't see him?

A. It may have been a week or two weeks.

Q. Did you, after you first knew Clyde, see him every week or two up to the time of the shooting?

A. No; I didn't because I worked at the ——— House; sometimes I didn't see him at all for a week.

Q. I say every week or two?

A. Nearly every week or two.

Q. Traveling up and down the streets?

A. Sometimes he was and sometimes he wasn't.

41 Q. You saw him up to the time and learned to know him well by the time you saw this shooting?

A. Yes, sir.

Q. You never talked with him, however, up to this day—the day before the shooting?

A. Yes, sir.

Q. Well, you had a little conversation with him on this night; at the time of the shooting you saw him—at the time of the shooting?

A. Yes, sir.

Q. Can you tell the jury what kind of a night it was, as to being light or dark?

A. It was starry night.

Q. What about whether it was dark or light? How far could you recognize a man you knew?

A. The door was standing open; the door was standing open; the table stood about here [indicates]; there was a big lamp on the table and on it a globe, and you could see outside of the gate by that.

Q. I only asked you as to the character of the night; how far in your judgment you could see a man not in the light and recognize him?

A. I don't suppose you could see him very far.

Q. When you heard this noise what were you doing?

A. I was sitting on the side of the bed.

Q. What was your wife doing?

A. She was straightening up the bed.

Q. Either of you undressed in whole or in part?

A. How is that?

42 Q. Either one of you undressed?

A. No, sir.

Q. Had you none of your clothing off?

A. One shoe off.

Q. Had your wife any of her clothing off?

A. I don't think she did; no, sir; she didn't.

Q. Remember and say whether at the preliminary examination you didn't state, and your wife also, that she was undressed and went out there in her night clothes?

A. I don't think she did; but I know I wasn't, because I didn't go back in the house any more.

Q. Was there a light in your house?

A. Yes, sir.

Q. Also a light over where John was?
A. Yes, sir.
Q. You heard this noise across the street and went out at once?
A. Yes, sir.
Q. Did you see these parties across the street?
A. I never seen them until they got to the gate.
Q. The gate in front of John's house?
A. Yes, sir.
Q. How far was the gate——
A. About four feet from the door.
Q. Was there a gate through, or an open way?
A. A gate through.
Q. What kind of a fence?
A. A paling fence.
Q. Any fence between the house and your house?
A. There was.
Q. You lived on a twenty-five foot front lot, did you?
43 A. Yes, sir; front.
Q. One of those twenty-five feet front lots?
A. Yes, sir.
Q. Next east of the lot on which John and Mrs. Walker were living?
A. Yes, sir.
Q. When you saw them coming close to the door, where were you?
A. I was got right up side to the door; when I see the boys walking up I slowed up.
Q. What made you go to John's?
A. Didn't I hear them coming across the street?
Q. Is that why you went?
A. Yes, sir.
Q. You heard them walk?
A. Yes, sir.
Q. Was it muddy or dry?
A. Dry.
Q. Frozen?
A. No, sir.
Q. You could not see them but heard them walking?
A. Yes, sir.
Q. You could tell they were coming across towards that house?
A. Yes, sir.
Q. You hadn't heard anything said up to that time?
A. Not until they got to the door.
Q. Did these parties who came over there open the gate?
A. Clyde and that other boy they pushed the gate open and walked in.
Q. When they walked in, where were you standing?
44 A. About three feet from the door.
Q. What direction from the door?
A. East.
Q. Where was your wife?
A. Right behind me.
Q. Standing right behind you?
A. Yes, sir.

Q. Now, when these parties came in one walked up and called you Joe?

A. He did. He said, "Hello, Joe; I know you."

Q. What did you say?

A. I said, "Yes, I know you, too."

Q. What was 'aid up to that time, if anything, between these two men and John Mullin; what was said between these two men and John Mullin?

A. The first word Clyde said, "What in hell are you hollering to me out in the street?" John said, "You have no right to scare these women." Clyde said, "Shut up," and told him to throw up his hands. He said he wouldn't. Clyde shot him twice and the other boy once.

Q. Where was Clyde standing?

A. He hadn't put his foot on the door: when he said that to him he put one foot on the door.

Q. Was there a step in front of the door?

A. One step; yes.

Q. Do you know how high the door was in front—the bottom facing of the door?

A. It wasn't as high as that step (points to step).

Q. So it was there was a step out in front of the door—what kind of a step was that?

45 A. Just one plank.

Q. How broad was it?

A. About a foot and a half.

Q. Which foot did Clyde put on the doorstep?

A. I could not say as to that; he put one.

Q. You are certain of that? This man you call Clyde put a foot up?

A. Yes, sir.

Q. Did he put his foot in front of the door or on the doorsill?

A. In front of the door.

Q. And commenced shooting?

A. Shot him twice.

Q. Mullin attempted no movement towards him at all?

A. None at all.

Q. You were still standing there?

A. Yes, sir.

Q. You knew Clyde Mattox at that time?

A. Yes, sir.

Q. Clyde knew you?

A. I suppose so; he recognized me.

Q. He had talked to you that day?

A. Yes, sir.

Q. Can you tell how he was dressed?

A. A broad-brimmed black hat and a light knitted coat.

Q. Did he have on an overcoat?

A. He had on two coats; a knitted coat, the coat he had on that day, and that night he had on a black overcoat.

Q. Was the coat buttoned up?

A. I don't think it was; either one of them.

46 Q. When did you first see his pistol?
A. Not until he told John to throw up his hands.
Q. Could you tell where he got his pistol from?
A. I don't know whether he got it out of his side pocket or out of a belt?
Q. Did you see the pistol when he was pulling it out or in his hand?
A. Not until he pulled it out and was holding it in both hands.
Q. You cannot tell where he got it from; from his pocket or belt or where; you don't know?
A. No, sir; I would not say.
Q. Where was your child on that night?
A. She was on the bed with the old lady.
Q. What old lady?
A. My mother-in-law.
Q. Mrs. Walker?
A. Yes, sir.
Q. Was John Mullen living with her?
A. Yes, sir.
Q. Were they married?
A. No, sir.
Q. Were you and John good friends?
A. Yes, sir.
Q. How long had you known John Mullin?
A. I hadn't known him more than four months.
Q. Had he been living with the old lady all that time?
A. No, sir.
A. How long had he been living with the old lady?
A. I could not say.
47 Q. About?
A. I suppose about a couple of months.
Q. You and he were good friends at that time?
A. He didn't never did anything to me and I never did anything to him.
Q. You were good friends?
A. Yes, sir.
Q. Did you know Frank Wolf?
A. I do.
Q. How far does he live from where you lived at that time?
A. Let me see; six lots between us.
Q. What direction does he live?
A. West.
Q. Did you see him on that night?
A. No, sir, I didn't.
Q. Did you not see him right almost immediately after this shooting?
A. No, sir; because in about ten minutes after the shooting I went to jail.
Q. I ask if you didn't see him within five minutes after the shooting?
A. I did not.
Q. Is it not true he came out almost immediately after the shooting; you came out; he asked you who did that shooting and you told him you didn't know?

A. I didn't see Wolf that night.

Q. Didn't you say to Wolf that when the shooting occurred you were in your house?

A. I never spoke to him.

48 Q. Did you say that?

A. I did not.

Q. Do you know J. W. Housell, who kept the drug store at the corner of Reno avenue and Broadway?

A. Yes, sir.

Q. Do you also know his son, William Housell, in business with him, a young man?

A. I know the boy; I don't know the old man.

Q. Were you in their drug store that night, shortly after the shooting?

A. Yes, sir.

Q. I will ask you whether or not you did not go there inquiring of them where you could find a physician; upon being asked what was the matter, you told them John Mullin was shot, and whether or not they didn't ask you who did the shooting, and you told them you didn't know?

A. I did, because Thornton told me to tell everybody so.

Q. Told you what you told them?

A. Yes, sir.

Q. Do you know Mrs. Josie Geffs? She boards and rooms in the building with Mrs. Hatch, Clyde's mother.

A. Yes, sir.

Q. Did you not, in the latter part of the month of August last, on Main st., in Oklahoma City, go to Mrs. Hatch, Clyde's mother, in the presence of Mrs. Hatch and Mrs. Geffs, and there say to Mrs. Hatch that you had received a dispatch from Soper to come to Wichita, and asked her to lend you money to come on, $5.00, and upon her saying to you it was strange that you should ask her for money, that you were going to swear her boy's life away, you said to her, "Mrs. Hatch, I will not do it; it

49 was too dark, I can not say it was Clyde?"

A. I did not.

Q. Do you know one J. E. Love, who lives at Oklahoma City?

A. Yes, sir.

Q. I will ask you whether or not, during the month of July or August, in his presence and that of W. C. Wells—do you know Wells?

A. I do.

Q. You didn't say to Mrs. Hatch that you were not certain; that you were mistaken before; that it was too dark, you were frightened and you could not say it was Clyde, and you never would again?

A. No, sir.

Q You didn't say that?

A. No, sir.

Q. Did you obtain a physician on th't night to go to see John?

A. Yes, sir.

Q. Who was it, Tom?

A. Dr. Graham.

Q. Dr. Graham? You walked down with the Dr., didn't you?

A. Yes, sir.

Q. Showed him where it was, where this wounded man was?

A. Yes, sir.

Q. Did you not, on the road there, talking with Dr. Graham, tell him that you didn't know who did the shooting?

A. I didn't tell him any such thing.

Q. Didn't tell him that?

A. No, sir.

Q. Do you know one East, commonly called Doc. or Doctor?

A. Yes, sir.

50 Q. T. H. East?

A. Yes, sir.

Q. Had you a conversation with him in Oklahoma City, a short while after this occurred?

A. Yes, sir.

Q. Did you not, in that conversation, tell East you didn't know who did this shooting?

A. I did not.

Q. What had you in your hand that night, when you went out there?

A. I had a Winchester.

Q. A Winchester rifle?

A. Yes, sir.

Q. Was it loaded?

A. Yes, sir.

Q. Did you do anything with it?

A. No, sir.

By the COURT. What is the object of this?

Mr. JOHNSON. To show his condition.

Q. How long a time did you remain there by the door, near to this building, after the shooting, before you went away?

A. I went away in about two minutes; I didn't go into the house.

Q. You didn't go to the house?

A. No, sir.

Q. Where did you go when you went away?

A. I went and got Thornton; he told me to get the doctor.

Question asked by a juror. I would like to ask one question: You said something about some one being in jail; was it you or do I understand you to say there was some one in jail?

51 A. I said I had been knowing Clyde Mattox ever since he came out of jail.

Redirect-examination of Thomas Whitman by Mr. ADY:

Q. Did you say you had any conversation with Frank Wolf about this matter?

A. No, sir; I didn't.

Q. Did you ever have any conversation with him?

A. No, sir.

Q. Did you say you had a conversation with Housell at his drug store after the shooting that night?

A. Yes, sir.

Q. You told him you didn't know who did the shooting?

A. Yes, sir.

Q. Did you say why you told that?

A. Yes.

Q. Why was it?
A. Thornton told me to tell everybody until he got Clyde.
Q. Who told you?
A. Thornton.
Q. Who is he?
A. Deputy United States marshal.
Q. Was that why you made that statement to Housell?
A. Yes, sir.
Mr. JOHNSON. I object.
Q. Do you know if that was the reason you were put in jail that night?
A. Yes, sir.
Q. Were you in fear of anybody at that time; at that time you made that statement?
52 Mr. JOHNSON. I object.
By the COURT. It is not material. He stated it was not because of any offense, but Thornton had put him in jail to protect him.
Mr. ADY. I certainly have a right to explain why he made that statement.
By the COURT. The marshal told him for the reason that if Mattox knew it he would kill him.
Mr. ADY. Havn't I the right to show that, to show the condition of the witness?
By the COURT. You have the right to show it if it is necessary.
Mr. ADY. I ought to have a right to show all the motives brought on the witness at that time; we can see how a man might be in fear.
By the COURT. He has given his reasons.
Mr. ADY. You may state, Mr. Whitman, whether or not you were afraid and felt the danger.
Mr. JOHNSON. We object. I don't think it is legitimate.
(Objection sustained. Excepted to.)
Q. Where did you go, if any place?
A. I went to the marshal. It was Thornton's deputy who carried me home, then I had from ten to fifteen——
Mr. JOHNSON. We object.
By the COURT. I will stop it at that point.
Q. Mr. Johnson asked you about some conversation with Mrs. Hatch in the presence of Josie Geffs. I believe you said you didn't say what he asked you; what did you say?
53 Mr. JOHNSON. We object as immaterial.
By the COURT. Objection overruled.
(Defendant excepts.)
By the COURT. You asked for the conversation; he has a right to give it.
Q. State what the conversation was.
A. The conversation was this: She asked me how many witnesses——
Q. Who asked you?
A. Mrs. Hatch. How many witnesses was there against Clyde. I told her I didn't know for certain. She said I want you to go down and see them all if you can and get them not to convict the boy, and I will give you a good claim and fifty dollars.

Q. Did you ever have any conversation with Mrs. Hatch in the presence of one Love, that Mr. Johnson referred to? Did you ever have any talk in the presence of Love? What are his initials?

Mr. JOHNSON. J. E.

Q. What is his business?

A. I never saw him do anything.

Q. Did you have a conversation with Mrs. Hatch in his presence?

A. Yes, sir.

Q. What was it?

A. She came to my house after me and left word for me to come up there; I went up there; she said she wanted me to go and see the witnesses and get them to not appear against Clyde, and she would give me $50.00 and a good claim. Love was standing there.

54 Q. Was that in the presence of Josie Geffs or Love?

A. Mrs. Geffs was not there.

Q. What was the conversation in the presence of Mrs. Geffs?

A. Mrs. Geffs came to my house one night——

Q. Did you say anything to Dr. Graham the night you went to him who it was who did the killing?

Mr. JOHNSON. I object upon the ground that I asked him specifically whether he said a certain thing, and he said he didn't say it.

By the COURT. The above will be stricken out.

Q. Do you know T. H. East?

A. Doc. East? Yes, sir.

Q. When was it; about how long ago?

A. Three weeks ago; I have been two weeks to-day; it was the day before I came here.

Q. Did you say he didn't do it?

Mr. JOHNSON. He said he didn't.

Q. In the conversation referred to by Mr. Johnson—you may state what that conversation was.

Mr. JOHNSON. I object.

By the COURT. The objection is sustained. I don't think the question is definite enough; I do not myself remember what it was; I will sustain it at this time.

Mr. ADY. It was something to the effect that he didn't know who did the shooting.

Mr. JOHNSON. I asked him if he didn't tell East that he didn't know who it was that did the shooting.

Mr. ADY. I have a right to ask what he said to East because East can come on and say that he said something.

55 Q. Were you ever in jail in Wichita?

A. No, sir.

Q. Anywhere for any offense?

A. No, sir.

That is all.

Recross-examination of Thomas Whitman by Mr. JOHNSON:

Q. You say you were never in jail for any offense?

A. No, sir.

Q. Were you not arrested and put in jail——

A. No, sir.

Q. You were not arrested about three weeks ago for whipping your wife?

A. No, sir, I wasn't; you can't get a man in Oklahoma city to say so.

Q. You testified as a witness in the preliminary examination nearly two years ago when Clyde was examined in Oklahoma city before Maj. Monroe?

A. Yes, sir.

Q. I will ask you whether or not I was present?

A. I suppose you was.

Q. I was representing Mattox, wasn't I? I will ask you if at that preliminary I didn't ask you, as I did to-day, whether you didn't say to the two Mr. Housells on that night that you didn't know who did the shooting?

A. No, sir.

Q. You didn't say so; you didn't say it? Didn't you answer me in that way?

A. No, sir; I didn't.

56 Q. You remember my asking the question, don't you?

A. I don't remember.

Q. Don't you remember that I, at that preliminary examination, asked you whether you did not say to Dr. Housell and to his son within fifteen minutes after the shooting that you did not know who it was that did the shooting?

By the COURT. That is all gone over.

A. Yes, sir.

By the COURT. He admitted that.

Q. I will ask you if at that time you didn't deny it and say that you didn't say it—at the preliminary examination?

A. No, sir.

Q. You were never in jail in Oklahoma?

By the COURT. You need not answer the question.

CHARITY WHITMAN, a witness on behalf of the prosecution, being first duly sworn, testifies as follows:

Direct examination by Mr. ADY:

Q. Is your name Charity Whitman?

A. Yes, sir.

Q. Where do you live?

A. In Oklahoma city.

Q. How long have you lived down there?

A. Two years.

Q. Are you the wife of Tom Whitman?

A. Yes, sir.

Q. Did you know John Mullin in his lifetime?

A. Yes, sir.

Q. Did you know Clyde Mattox before Mullin was killed?

57 A. No, sir.

Q. How near was your house to Mrs. Walker's at that time?

A. Her's is on one lot, mine on the other.

Q. Mrs. Walker your mother?

A. Yes, sir.

Q. Which way is your house from her's?
A. East from her's.
Q. Do you remember what month John Mullin was killed?
A. December.
Q. What year?
A. 1889.
Q. What time in the evening was it?
A. Between eight and nine o'clock.
Q. What did you first hear that attracted your attention?
A. I heard some women hollowing that attracted my attention.
Q. Where were they?
A. In the street.
Q. Which way from your house?
A. North from the house.
Q. Where were you when you heard them scream?
A. In my house.
Q. Who was with you?
A. Myself and Tom.
Q. Your husband?
A. Yes, sir.
Q. What did Tom do when he heard it?
A. He run in the yard.
Q. What did you do?
A. I went out first; he didn't come until after I went.
Q. Where did you go?
A. I went to the fence in front of my door.
58 Q. Where were you when the shooting was done?
A. I was standing as close as this step is from there.
Q. Was there a light in the house?
A. Yes, sir.
Q. What made it light?
A. A lamp.
Q. Was it light on the outside?
A. No, sir; no lamp on the outside. There wasn't a moon.
Q. Was there any light on the outside?
A. Yes, sir; the light wasn't out.
Q. Was there any door open?
A. Yes, sir.
Q. What door?
A. North door.
Q. Did you see John Mullin when you went out?
A. Yes, sir; he was standing in the door.
Q. How was he standing?
A. Kind of leaning up against the face of the door.
Q. When you got to the door, where were these men?
A. The four of us were standing on the east side of the door when he came.
Q. Four of you?
A. Myself and Tom and two men.
Q. Where did the men come from?
A. Out of the street.

Q. Where did you first see them?

A. When I first saw them they were come from the house where these women had been.

Q. Did you see the women?

A. No, sir; I didn't see them.

Q. What did you hear those women say and John say?

59 A. The first I heard a man said he said to the women, "You hush," and a woman, "You scared me to death." At that time John Mullin says, "Who is that?" and Mrs. Lizzie Wells says, "There is some white men out here after us." John says, "What have you got to do this way?" "We colored folks have respect for ourselves and for the rest." The gentleman says, "What in hell have you got to do with it?" At this time they were coming on back across the street.

Q. After they said that what was done?

A. They came over to ma's house where John was.

Q. What did they do?

A. When they got to the door they walked up to Tom and says, "Hello Joe; you know us." He says, "Yes; I know you both." They says, "Yes; we know you, too."

Q. What next took place?

A. He says, "This fellow is giving us a lot of head and we won't stand it." John says to him, he says, "What in hell have you got to do with it?" John says, "I have got a right smart." John says, "I will take you to an officer." The gentleman says, "I won't take it." He says, "Throw up your hands! you black son of a bitch."

Q. How many times did the man say to throw up his hands?

A. Twice.

Q. How was he standing with reference to John?

A. With one foot on the step and the other on the ground.

Q. Did you notice what he shot with?

A. It was a pistol.

Q. What was John doing while they were shooting?

A. He had one arm on the door and the other holding to the other side of the door-facing.

60 Q. When they were shooting what was he doing?

A. When they made the first shot he dropped over that way; he just eased down in an instant, holding to the door as he went.

Q. Did John have any weapons?

A. No, sir; he never had a thing in his hands.

Q. Did he make any demonstration or effort to strike?

A. He didn't have a chance, because they spoke to him "throw up your hands, you black son of a bitch."

Q. Were there any shots fired while he was falling or after?

A. Just one.

Q. Did you see John after he was dead?

A. Yes, sir.

Q. When did he die?

A. The next day about 1 o'clock; I wasn't at hom'; I was working at a laundry, but I came home in the evening.

Q. Did you know these men who shot?

A. No, sir.

Q. Do you remember what they looked like?
A. Like young men.
Q. What size; big or little?
A. Both were small; one seemed to be a little taller.
Q. How long was it after that until you saw Clyde Mattox?
A. I never seen him no more until they had his trial at Oklahoma City.
Q. Do you know whether he was one of the men?
A. He was one of the men I saw down there that night.
Q. You may state whether he was the man that did the talking.
A. He was one who did the talking.

61 Cross-examination of Charity Whitman by Mr. JOHNSON:

Q. You were a witness before Maj. Monroe on the preliminary examination, were you not?
A. Yes, sir.
Q. Clyde Mattox was there?
A. Yes, sir.
Q. I will ask you if at that time there you didn't say Clyde looked something like one of these men, but that you couldn't say he was one of them?
A. No, sir; I said ——
Q. Wait a moment; didn't he stand up there in that preliminary, and were you not asked whether he was one of them, and didn't you say that he was one of them so far as size was concerned; looked like one of them, but that you could not remember?
A. I cannot remember anything about him standing up there.
Q. Isn't it true that in that preliminary examination ——
A. (Interrupting). I would not say that he did, but I can not remember about his standing up.
Q. Didn't you say in that preliminary that you could not say that he was one of those men?
A. No, sir.
Q. Didn't you say that in the presence of Maj. Monroe?
A. If I did, I don't know it.
Q. You remember you were sworn?
A. Yes, sir.
Q. You remember Maj. Monroe?
A. Yes, sir.
Q. You remember you were sworn in the presence of Monroe?
A. Yes, sir.

62 Q. Do you remember which one of the attorneys was representing the Government?
A. Ady and Soper both.
Q. Which one of those gentlemen was there representing the Government when you testified?
A. Ady.
Q. Don't you remember that it was Soper?
A. He was there, I remember he was, but it was Ady I testified to, and Soper, both, was there.
Q. Did you say there, as you say here, that Clyde Mattox was one of the men you saw?
A. I say he was.
Q. You say it now?

A. I say I said it then.
Q. Did you say that in the preliminary examination?
A. Yes, sir.
That is all.

Dr. W. R. THOMPSON, a witness for the prosecution, being first duly sworn, testifies as follows:

Direct examination by Mr. ADY:

Q. You are a physician and surgeon?
A. Yes, sir.
Q. You were residing and practicing at Oklahoma City when Mullin was killed?
A. Yes, sir.
Q. Did you see him after he was wounded?
A. Not until after he was dead.
Q. After he was dead?
63 A. Yes, sir.
Q. Do you remember about when it was?
A. Sometime in December, 1889; I don't remember the exact date.
Q. Did you see his wounds?
A. Yes, sir.
Q. Will you describe to the jury, please, the wounds that he had on his person?
A. He had three as I found; as I found he had three wounds on his person. One was in the upper lobe of the right lung, entering about two or three inches above the right nipple, passing through the upper lobe of the right lung, fracturing one end of the fourth rib and fracturing one end of the fifth rib, passin' through and lodging beneath the skin on the right side beneath the shoulder blade; that was one wound. And another was in the upper portion of the left buttock, the second was in the right hip, passing through that opening in that bone (indicatin') and a portion of the ball lodged in front, passing through that opening and lodged; a portion of that ball was divided; we could not find the other portion of that ball.
Q. Where was it found in there, back instead of front?
A. Yes, sir.
Q. You say a portion of it struck the bone?
A. The ball seemed to have struck the bone as if this portion of it lodged. We could not trace it out or locate it; where I found that it was on the inside, not on the outside at all. The other one was on the right arm. The ball passed through this elbow joint fracturing the upper end of the radius and ulna, coming out just about the center of this biceps muscle; the ball entered here (indicates), passed through, and emerged about the center of this muscle. That was the third wound.
64 Q. Were either of these wounds mortal?
A. Not necessarily so.
Q. Have you any idea what produced his death?
A. I think he died of pne'monia; there was considerable inflammation of this right lung and effulsion of blood of the right pleura cavity.
Q. What he died of was the effects of what?
A. The effects of a gunshot wound.

Q. The wound you say entered the right breast?
A. Yes; that was the wound that evidently produced his death; that is judging from the examination it would indicate it.
Q. Would a wound of that kind naturally be mortal?
A. It was a wound that might prove fatal, but not necessarily so.
Q. It went through the lung?
A. Yes, sir.
Q. And that is your opinion of what killed him?
A. Yes, sir; he died of pneumonia; there was considerable pneumonia existing, effulsion of blood of that pleura cavity.
Q. Pneumonia was produced from the wound?
A. Yes, sir.

JOE WATSON, a witness on behalf of the prosecution, being first duly sworn, testifies as follows:

Direct examination by Mr. ADY:

Q. Your name is Joseph Watson?
A. Yes, sir.
Q. You live where?
65 A. Oklahoma City.
Q. How long have you lived there?
A. Something over two years.
Q. Were you living there when John Mullin was killed?
A. I was.
Q. Did you hear the shots that night?
A. Yes, sir.
Q. Where were you?
A. In my tent.
Q. Where was your tent?
A. West of John Mullin's; as near as I can come at it, about two blocks.
Q. On the same street?
A. Yes, sir.
Q. You were in the tent when you heard the shooting?
A. Yes, sir.
Q. Anybody with you?
A. My wife was in there with me.
Q. When you heard the shooting, what did you do?
A. When I heard the shooting and some hollowing down the street, I raised up and opened the tent door and stood in the door.
Q. How near was you in the street?
A. My tent was pretty close on the sidewalk.
Q. About how many steps from the sidewalk?
A. About ten feet from the sidewalk, as near as I can come at it.
Q. During or after the shooting did you see anybody going by?
A. Shortly after the shooting I was standing in my tent door, looking, and I saw two men; it was quite starry; I saw two men
66 come running from the report of a gun, come running up the street, two of them; they had on, from the appearance of them, what looked like black suits. Just as they were passing my tent, out in

the middle of the street, they says, "We have got the damned black son of a b——," and kept going; I could not tell who they were; they were running.

Q. What direction did they run in?

A. They was going at the time I seen them; going due west?

Q. By the sight of them did you know who they were?

A. I did not.

Q. Where did you go then?

A. Shortly after they passed I went down into the street to where the shooting occurred. I walked into the gate, goes up to the door; there was a large crowd around the door; some in the house; I meets this fellow, Tom Whitman, standing there, at the time. He says——

Mr. JOHNSON. Wait a moment; you need not tell anything that Tom said at that time.

Q. Who did you see there besides Tom?

A. O, there was a large amount; I didn't take any particular notice who there was; there was a large crowd, most of them colored, at the time I got down there.

Q. Did you ever see and have any talk with Clyde Mattox about this afterwards?

A. Yes, sir.

Q. When was it?

A. After this shooting occurred down there; it was some space of time afterwards.

Q. About how long?

67 A. I suppose a month; I can't tell exactly. A right smart while afterwards.

Q. Did you see Clyde for a good many days afterwards?

A. No, sir; I didn't. I met with him at his mother's house.

Q. What was you doing at the time you met him?

A. Mighty little bit.

Q. Who were you working for?

A. I was working on the street what I could; helping Mrs. Hatch split wood, or anything she wanted done.

Q. Had you been working for Mrs. Hatch?

A. Yes, sir.

Q. Were you working there?

A. I would generally go up there during the day and help her.

Q. Where was it you saw Clyde?

A. The first time after the shooting was done it was in his mother's cook room.

Q. How did you happen to see him?

A. She sent for me to come up, by my little boy. I went up and carried my ax; thought she wanted some wood——

By the COURT. Never mind.

A. I rapped at the door; she says "come in." I walked in, met Clyde and another young gentleman and an old gentleman; he shook hands with me, and Clyde did. Clyde walked out in the kitchen or shed where they kept wood; he called me out and says, "Joe, were you down there at the night of that shooting?" I said, "No, sir."

Q. What did he saw further than that?

A. He says, "By God! I put my hands on your shoulder and hollowed, 'Hello, Joe,' to you."

68 Q. What did you say to him?

A. I said, "No; I'll be damned if you did; it was Tom Whitman," for Tom told me that night shortly after I got there.

Q. Did you say that to Clyde?

A. Yes, sir; the very words I speak to you I said to him.

Q. What did he say to that?

A. He didn't say anything more to me about it.

Q. Do you know of your own knowledge of Clyde sending for Tom Whitman to come down there to talk?

A. No, sir; Clyde didn't tell me to tell Tom Whitman to come down there to talk to him.

Cross-examination of Joseph Watson by Mr. JOHNSON:

Q. Joe, you say when you went up to Mrs. Hatch's house that morning and into her room you met Clyde?

A. I did.

Q. There was a young man and an old gentleman.

A. That is so.

Q. Do you know who they were?

A. One of them I don't know; he is in Oklahoma City; his son is here now; and another young boy, named Doc. Healy.

Q. Was it Mr. Hast, Joe?

A. I think it was.

Q. How long had you been there before Clyde called you out?

A. I suppose probably ten or fifteen minutes; all of us talking.

Q. Where did you go when you went out where he was?

A. I wasn't over eight or ten feet from the door before I walked into the tent, where the wood was. It was raining at the time we went into the tent.

69 Q. Was the tent separate from the house?

A. Yes, sir.

Q. When out there, he and you standing in the tent, were you so far removed that the parties in the house could not hear you?

A. I am satisfied they could not hear me, because the door was shut.

Q. You and he were out there together?

A. No; this other young gentleman was there with us.

Q. Clyde, at that time, had been accused of killing John?

A. Yes, sir.

Q. He was under arrest; had surrendered himself and was under arrest?

A. I had been told so; and that old gentleman was there——

Q. Guarding him?

A. Yes, sir.

Q. He called you out there and asked you if you was at that shooting?

A. If I was at that time.

Q. Anything about the killing of Mullin?

A. Not Clyde himself.

Q. Nothing had been said of Mullin?

A. He asked me if I was at the shooting; yes.

Q. You told him you were not?

A. Yes, sir.
Q. What did you say he said?
A. He said, "By God! I put my hand on your shoulder and said, 'Hello, Joe.'"
Q. Are you certain that you and Clyde, during the time you were there that morning, went out of the room where his mother was into this tent or any other place?
70 Q. Is I certain?
A. Are you certain you and he went out of the tent away from his mother?
A. Certainly I am; I wasn't crazy.

NANCY BATES, a witness on behalf of the prosecution, being first duly sworn, testified as follows:

Direct examination by Mr. ADY:

Q. Your name is Nancy Bates?
A. Yes, sir.
Q. Where do you live?
A. In Oklahoma city.
Q. How long have you lived down there?
A. I have been living there ever since 1889, in June.
Q. Do you remember the night John Mullin was killed?
A. Yes, sir.
Q. Were you living there then?
A. Yes, sir.
Q. How near did you live to Mrs. Walker's at that time?
A. There was one block between my house and her's.
Q. Which way did you live from there?
A. East.
Q. Whose house was between your's and their's?
A. Tom Whitman's.
Q. Did you hear that shooting?
A. Yes, sir.
Q. What was the first thing you heard?
A. Some women hollering.
71 Q. Where was the women hollowing?
A. Out in the street; sounded that way to me.
Q. Which way from your house?
A. West.
Q. Well, what did you do when you heard the hollowing?
A. I jumped up and run to the door.
Q. To your door?
A. Yes, sir.
Q. Did you go into the street?
A. I stood and heard some one talking, and in just a few minutes I heard a person's feet going towards mother's house; I went, too.
Q. Who is your mother?
A. Laura Walker.
Q. She is your mother?
A. Yes, sir.

Q. And you went to whose house?
A. Laura Walker's house.
Q. Did you go there before the shooting?
A. Me?
Q. Yes.
A. No; they got there just a little before I did.
Q. Who, the men?
A. Yes.
Q. How near to them were you when the shooting took place?
A. I had just stepped over into Tom Whitman's lot; of course when I run so I halted a little.
Q. About how far was you from them?
A. The lots just twenty-five feet and I had got over in his lot.
72 Q. That was next to your mother's?
A. Yes, sir.
Q. Did you see the man that did the shooting?
A. Yes, sir.
Q. Describe them as to size and appearance.
A. Well, they was two spare men, like.
Q. Had you ever seen them before?
A. I saw them that day.
Q. These same men?
A. Yes, sir.
Q. Where?
A. I saw them to the Bohemian's house: he lived right west of me.
Q. What were they doing with him?
A. They had him under arrest, I think.
Q. Do you know that Bohemian's name?
A. No, sir.
Q. His business?
A. No, sir.
Q. Do you know what he was arrested for?
By the COURT. I hardly think that is proper.
Mr. ADY. I think I can make it appear to the court. She says two men had the Bohemian arrested; thinks it was the same two men. Perhaps if I could show what he was arrested for I could show the identity——
By the COURT. Unless you can show that she read the warrant, that is the best evidence, it would be hearsay. I will not permit it.
Q. Was it at the Bohemian's house you saw them?
A. Yes, sir.
73 Q. What direction is that Bohemian's house from yours?
A. West.
Q. How many houses west, how many houses west of your mother's, Laura Walker's?
A. Her house is on the south side, his is on the north side of the street; I think it was a shack house, a shack tent.
Q. Did this Bohemian live in a house or a tent?
A. He lived in a shack, standing up; that is a little kind of a low house.

Q. How do you know it was the same man that had been at the Bohemian's that you saw that evening?

A. Because I went and stood and looked at him.

Q. You stood by when the shooting took place?

A. Yes; I was near about there.

Q. Did you see the men shooting?

A. Yes, sir.

Q. How many times did they shoot Mullin?

A. Three times.

Q. Before the shooting did you hear them speak to anybody, either of them?

A. I heard them speak to John Mullin.

Q. Did you hear them speak to anybody else out in the street?

A. No, sir.

Q. When they came to the door?

A. Outside of Tom Whitman?

Q. What did they say to him?

A. They said "Hello, Joe; we know you." He says, "Yes; I know you, too." They said, "This fellow is trying to give us a lot of head and we are not going to take it; we are marshals." "Throw up your hands, you damned black son of a bitch! Throw up your hands!"

74 Q. After that where did they go?

A. West.

Q. Do you know Joe Watson?

A. Yes, sir.

Q. Which direction was the tent?

A. West.

Q. What time in the evening would you say this was?

A. When the shooting takes place?

Q. Yes.

A. It was nearly nine o'clock, I think, to the best of my judgment.

Q. How was it out doors, dark or light?

A. It was dark.

Q. Did you see men who did the shooting at the time they shot?

A. Yes, sir.

Q. How could you see them?

A. By the lamp.

Q. Which lamp?

A. Mother's.

Q. Where was it?

A. It was on the table in the middle of the floor?

Q. Did you see Mullin at the time he was shot?

A. Did I saw him when he was shot? When I was coming over to mother's house he was in the door; I could not see him; he was standing sideways.

Q. In whose door?

A. In mother's door.

Q. How far was that from the lamp?

A. The table was standing in the floor; I took no particular notice how far it was.

75 Q. Was this particular door standing open?

A. It seemed to me John was standing in the door and the light come out of the door.

Q. How did this light come, out of the window or out of the door?

A. Out of the door?

Q. How close was you to these men at the time; would you say how close?

A. At the time they got done shooting I was right up there. When I first stepped out and went to mother's house I went right up there.

Q. Show us how close you was.

A. I was coming like this; he hollered and shot; I was coming to the door and I said to mother: "Are you shot?" She said, "No." I said, "Where is John?" She says, "He is lying in the door." I says, "Is he shot?" She says, "No, I guess not."

Mr. JOHNSON. Wait.

Q. How long after that was it when you saw either of these men again?

A. I never saw either one of them again until preliminary trial was.

Q. Do you know who one of these men was?

A. Yes, I know now. I knew the face that day, but I never had known him before.

Q. You may state who one of them is, if you know.

A. Mr. Mattox over there.

Q. Was he one of the men?

A. Yes, sir.

That is all.

76 Cross-examination of Nancy Bates by Mr. JOHNSON:

Q. You are a sister of Charity Whitman, are you, Nancy?

A. Yes.

Q. Where were you on that night with reference to Tom's lots when this shooting commenced?

A. I was at home.

Q. Were you at home when the shooting commenced?

A. I was at the house then.

Q. Then, let me see; Tom's lot is the next lot, where he lived at that time, was the next lot east of your mother's, was it?

A. Yes, sir.

Q. Was your lot next to Tom's?

A. My lot and Tom's adjoined.

Q. You were next east of Tom's lot?

A. Yes, sir.

Q. When you heard this noise you were in your house; when you heard the hollowing you were in the house?

A. When I heard the woman holler I was in my house.

Q. What were you doing, was you going to bed?

A. Was I goin' to bed?

Q. Yes; had you gone to bed?

A. I don't think I was.

Q. What do you say about it?

A. I don't think I was gone to bed.

Q. Do you remember whether you had your clothes on or was undressing?

A. I had my clothes on.

Q. Had you a light in your house?

A. I had my lamp burning.

77 Q. Do you remember what you were doing when you heard the noise?

A. I was setting ——

Q. Were you doing an ything?

A. I had just got through eating potatoes.

Q. Was anyone with you?

A. My child.

Q. When you heard this hollowing did you go to the door?

A. I went right to the door.

Q. Stood in the door and listened?

A. Of course, when I got to the door I stopped for a moment to see what was the matter.

Q. You did stop to see what was the matter? What is the first thing you heard when you stood in the doorway?

A. The first thing I heard I heard John and I heard the man say "What have you got to do with it?" John says, "I've got a heap to do with it; let those women alone! what have you got them out in the street at this time of night for?"

Q. What next did you hear?

A. Next thing was a runnin'.

Q. Heard running; do you know who it was or did you know who it was running?

A. I knew it was the persons what was talking in the street, running towards mother's house.

Q. Could you see them?

A. I could hear them.

Q. You could tell by the sound that they were going across the street?

A. Yes, sir.

78 Q. Could you see the forms of men when tney went into the gateway to your mother's house?

A. Certainly, I could.

Q. You were still standing in your doorway, were you?

A. No, sir.

Q. Where were you at the time you saw them go through the gateway?

A. I was going from the yard.

Q. Were you in your yard when you saw them go through the gate?

A. I was near to Tom Whitman's house.

Q. Do you mean to say you had got on Tom's lot at the time you saw them go through this gateway?

A. I was coming up the side of the fence.

Q. Outside?

A. No, inside.

Q. Had you crossed the line between you and Tom and gone on Tom's lot when you saw them go through the gateway?

A. I don't know whether I was on Tom's or mine.

Q. You were close to the line between you and Tom when you saw them enter the gate?

A. Yes, sir.
Q. Were you running or walking?
A. I was walking pretty brisk.
Q. Was there anything between Tom's lot and yours; any fence of any kind?
A. Two strands of wire.
Q. Barbed wire?
A. No, smooth.
79 Q. Did you climb over or go under, or how did you get over?
A. I stooped through.
Q. Where did you say you were at the time the first part of the shooting took place?
A. I was somewhere close; in Tom Whitman's lot.
Q. Do you know how wide Tom's lot is?
A. Twenty-five feet.
Q. How much of that lot had you crossed when the shooting took place?
A. I will not say.
Q. You hadn't gotten over the wire into your mother's lot when the shooting took place?
A. I hadn't got to mother's house.
Q. Is there, or was there at that time any fence or wire or anything between your mother's lot and Tom's lot, do you remember?
A. I don't remember.
Q. What I want to know is whether you were still on Tom's lot when the shooting took place; you heard the shots, you said to Mr. Ady?
A. I seen it.
Q. Now, were you still on Tom's lot when that shooting took place?
A. I don't know whether I was or no.
Q. Do you know now where you were?
A. I was near about there.
Q. Did the shooting excite you?
A. It was done so quick I couldn't get excited at it until after it was over with.
80 Q. When the shooting commenced it excited you, didn't it?
A. I wasn't excited to do any good until after it was done.
Q. When it was over you were frightened, wasn't you?
A. O, a mighty little.
Q. Can you tell where you were when the shooting took place, on your mother's lot, close to the door, or on Tom's lot?
A. I was coming inside of the fence.
Q. I want you to tell, as well as you can, whether you were on your lot, Tom's lot, or your mother's lot when the shooting took place?
A. I was coming; I was near about there.
Q. Whose lot were you on?
A. On mine or Tom's one.
Q. You are not certain now, are you, whether you had gotten over to Tom's lot when this shooting took place; you are not certain; you were just going ahead walking rapidly?
(Witness hesitates.)

Q. Did you see the faces of these men, or either one of them, as you came up from the east, did you?

A. I saw them both.

Q. Did you see their faces or face?

A. I saw them both.

A. That one that slapped Tom on the shoulder and said, "Hello, Joe." I was looking.

Q. That was when he first came in?

A. Yes, sir.

Q. You were down on your lot close to your house?

A. I wasn't close to my house.

Q. Where were you?

81 A. I was near about between Tom's lot and mine somewhere.

Q. You can not say; you were in between the line of your house and the line of Tom's house, is that it?

A. I was near about there.

Q. Tell the jury whether you were on Tom's lot or on your lot?

A. I was nearly there; I was just seeing what was done.

Q. Where were you? Near where were you?

A. Near to mother's.

Q. How far do you think you were from your mother's when this man slapped Tom and said, "Hello, Joe?"

A. Not very far.

Q. About how far?

A. I don't know.

Q. Do you know where you were at that time?

A. I know I was side of the fence.

Q. Side of the front fence?

A. Right side of the front fence.

Q. I want you to know with reference to these three lots—your own, Tom's, and your mother's; can you tell any better?

A. I think I told good enough; I was coming up side of the fence; I was near there.

Q. This shooting took place after this man was slapped on the shoulder?

A. After?

Q. Yes.

A. It was all done so quick——

Q. Tell me whether this shooting took place after this man slapped Joe; was the shooting done after that?

82 A. It was all done just that way.

Q. Did you hear any conversation occur between John Mullin and these men after they slapped Tom and said "Hello, Joe!"?

A. That was said; the fellow slapped and said "Hello, Joe." He told him to throw up his hands; it was done just that way.

Q. All at the same time?

A. Yes, sir.

Q. When this man slapped Tom on the shoulder his face was turned to the east?

A. To the east; was standing right in the door.

Q. Was his face turned towards you when he slapped Tom on the shoulder?

A. His face was towards Tom.
Q. Towards you also, wasn't it?
A. The side of it.
Q. That was the only time you saw the face of the man, wasn't it?
A. No; I saw them when they turned to run out.
Q. Did you see the full face or the side?
A. The first one I saw I looked right in his face, and when the other turned I looked right at him.
Q. When this man did the *d*hooting who was he facing?
A. Towards Tom; that would be towards the south.
Q. Where were you at the time?
A. In the yard.
Q. Whose yard?
A. Between Tom's lot and mine; in the*ir* somewhere.
Q. Do you say that on that night at th't distance you could see the face of that man and recognize him?
83 A. Of course; I didn't recognize only the face but the clothing.
Q. You could see the clothing? What kind of clothing did he have on?
A. D'rk.
Q. Overcoats?
A. Very light.
Q. W*a*ht kind of hats?
A. Broad brimmed black hats.
Q. Pulled down pretty well over his face?
A. I never noticed.
Q. Slouch hat?
A. Never noticed.
Q. Was it or not?
A. Never noticed.
Q. Could you tell whether it was pulled over his face or not?
A. Didn't never notice.
Q. Do you say you looked that fellow in his face and didn't know or say how it was?
A. Yes, sir.
Q. The next time you saw Mattox was where?
A. In preliminary trial in Oklahoma City.
Q. Were you a witness?
A. Yes; I was called but not examined.
Q. Did you know then what you know now?
A. Yes; of course.
Q. Do you know why you wasn't examined?
A. Yes.
Q. Did you tell the prosecutor there that you knew what you know now?
84 By the COURT. You need not answer that question.
Q. When was it you first told this that you could recognize these men by their faces?
By the COURT. It is not nexessary to answer that cross-examination.
(Defendant excepts.)

MARTIN BATES, a witness for the prosecution, being first duly sworn testifies as follows:

Direct examination by Mr. ADY:

Q. Is your name Martin Bates?
A. Yes, sir.
Q. You reside in Oklahoma?
A. Yes, sir.
Q. How long have you lived there?
A. I have lived there since—I forget what month, but it is going on——
Q. About the time they opened it up?
A. Yes, sir.
Q. Did you know John Mullin?
A. Yes, sir.
Q. Remember the night he was shot?
A. Yes, sir.
Q. Did you see Clyde Mattox and some one else together that evening?
A. That night.
Q. Who was with him?
A. They say it was Doc——
Mr. JOHNSON. I object to any statement.
Q. Did you see Clyde?
85 A. Yes, sir.
Q. With somebody else?
A. Yes, sir.
Q. How did they compare in size, the two men?
A. One was a little larger.
Q. Which was a little the largest?
A. The man on the other side of me.
Q. Clyde or the other fellow?
A. The other fellow.
Q. Where were they when you saw them?
A. They was going south; I was going north on Broadway.
Q. I can not locate that street. What is that street that Mullin lived on, Choctaw east and west?
A. Yes, sir.
Q. Broadway north and south?
A. Yes, sir.
Q. Which way was Broadway from where Mullin was?
A. West one block.
Q. Do you know where Joe Watson lived?
A. Yes, sir.
Q. How far was it from Joe Watson's?
A. About a half a block away.
Q. They were going which way on that street when you saw them?
A. They was going south on Broadway.
Q. Now, which way were they from Choctaw?
A. North.
Q. How far from Choctaw?
A. Up between——

86 Q. How many blocks?
A. About four or five blocks.
Q. Going in the direction of Choctaw?
A. Yes, sir.
Q. If they followed that street down to Choctaw when they got to Choctaw how far would they be from Mullin's house?
A. Pretty near a block.
Q. Which way?
A. West of my grandmother's house.
Q. The house where he was killed? What time in the evening was it?
A. Between seven and eight o'clock.
Q. Was there a colored church some place?
A. Yes.
Q. Where?
A. West, one block.
Q. West from whom?
A. From grandmother's house, one block west and two and a half blocks south, the next street; it wasn't a street; intended for a street back of Choctaw.
Q. Was it near Broadway, this colored church?
A. One block west and about half a block—not half a block south.
Q. Do you know whether there was a meeting of colored people there at the church?
A. I wasn't there.
Q. You wasn't?
A. No, sir.

Q. How long after you saw these men did you hear that shooting?
87 Mr. JOHNSON. The witness has not said he heard the shooting.
Q. Did you hear any shooting that night?
A. Yes, sir.
Q. Where was you when you heard the shooting?
A. I was at home in bed.
Q. You was at home in bed?
A. Yes, sir.
Q. How far from Mullin's or your grandmother's house?
A. Two houses east of her house.
Q. Could you tell where the shooting was?
A. Not until I got up and got to the door.
Q. Where was you when the shooting occurred?
A. In the house in bed.
Q. When you got to the door what did you see?
A. I saw people running and heard mamma call grandmother.
Q. How long was this after you had seen Clyde Mattox and the other man going down Broadway south?
A. It couldn't have been more than a half or three-quarters of an hour.
Q. Did you notice how they were dressed?
A. I could not tell particularly how they was dressed but they had on short coats and big black hats.
Q. How did you know Clyde Mattox?
A. Because I had seen him before that. He had been chinning around the Keno room. We had been——

Q. Been what?
A. Monkeying with each other, up in the Keno room, up in the Grand Avenue.
88 Q. Had you seen him that day?
A. I don't think I had that day; I hadn't been up in town. I had been working.
Q. Did you know a Bohemian there?
A. Yes, sir; four or five.
Q. Did you know about a Bohemian being arrested that afternoon?
A. Yes, sir.
Q. Did you know what his name was?
A. No, sir.
Q. What did they call him?
A. Called him "Pap;" we always did.
Q. Where did this Bohemian live with reference to your grandmother's?
A. On the north side of the street, not quite a half a block away from grandmother's.
Q. I mean the fellow that was arrested.
A. Yes.
Q. Did you see him when he was under arrest?
A. No, sir.

Cross-examination by Mr. JOHNSON:

Q. Who is your grandmother? You speake of your grandmother, who is she?
A. Laura Walker.
Q. Is Nancy Bates your mother?
A. Yes, sir.
Q. You met Clyde and some other man going south on Broadway, and you were going north?
A. Yes, sir.
Q. Do you remember the character of the night, Martin, as to light or dark?
A. I do.
89 Q. How was the night?
A. It was just a little before the moon rose.
Q. It was dark at the time you met them?
A. Yes, sir.
Q. How far were you from them when you passed them on the street?
A. We just passed along like two persons coming near together.
Q. Was there anything said as you passed? Did you speak?
A. Yes; we spoke.
Q. Who spoke?
A. Both spoke pretty near the 'ame time.
Q. By both, you mean you and Clyde?
A. Clyde and I and all.
Q. Said "How do you do?"
A. Said "Hello;" made remarks like that.
Q. You were close to them?
A. Yes, sir.

Q. You think you can not be mistaken that at that time you saw Clyde going down that street?
A. I know I can't be mistaken.
Q. About wnat time was it, do you think?
A. Between seven and eight o'clock.
Q. How near eight o'clock?
A. I can't be positive.
Q. Was it as late as half past seven o'clock?
A. I guess it was about as late as half past seven o'clock.
Q. Your idea would be that it was about half past seven? You went on up town; they went south, on past you going south? You didn't see them, how far they went, or where they went?
A. No, sir.

90 ELISHA HOPKINS, a witness on behalf of the prosecution, being first duly sworn, testifies as follows:

Direct examination by Mr. ADY:

Q. Is your name Elisha Hopkins?
A. Yes, sir.
Q. Where do you reside?
A. In Oklahoma city.
Q. How long have you resided there?
A. Ever since 1889; about the 27th of May, I think, 1889.
Q. What is your occupation?
A. At present I am a notary.
Q. Do you remember when Mullin was killed?
A. Yes, sir.
Q. What was you engaged in that time?
A. I was engaged as pastor of a church.
Q. Clergyman?
A. Yes, sir.
Q. Do you remember that night that he was killed?
A. Yes, sir.
Q. Do you remember the date?
A. Well, I don't exactly remember the date; I was informed it was on the 12th of December.
Q. Did you hear the shooting?
A. Yes, sir.
Q. Where had you been that evening?
A. Before the shooting commenced?
Q. Yes.
A. I had been to church.
Q. How far was this church from the place where the shooting took place?
91 A. I suppose a little over a block and a half.
Q. What direction?
A. It was southwest of the shooting.
Q. How far west along the street that the shooting was on?
A. Well, the church was on the corner of Robinson and, you may say, an alley; the church fronts on Choctaw street.

Q. To go to the church how far would you go west and how far south?
A. South about half a block; west about a block and a half.
Q. Had you conducted the services at the church that evening?
A. Yes, sir.
Q. What time did it occur with reference to the time that the services closed, before or after?
A. After the services closed.
Q. Where were you at the time you heard the shooting?
A. I was on the way home, towards the shooting.
Q. What street were you on?
A. Choctaw.
Q. Is that the street Mrs. Walker lived on?
A. Yes, sir.
Q. How far were you and in what direction from the shooting at the time it occurred?
A. I was west of the shooting, going towards the railroad east.
Q. Going towards the shooting?
A. Yes, sir.
Q. On the same side or the other side of the street?
A. On the same side of the street that the shooting occurred.
Q. How far, about how many houses?
A. I suppose when this shooting commenced I was halfway be-
92 tween Robinson and Broadway.
Q. Along about Joe Watson's house?
A. I had just passed.
Q. About how many lots is that west of this place?
A. I think it was the fifth lot from the corner.
Q. Was it in the same block the shooting was in?
A. Second block.
Q. The next west?
A. Yes, sir.
Q. How many shots did you hear fired?
A. I heard three shots.
Q. Immediately after the shooting did you see anybody running in the street?
A. Yes; I met two persons running west from the shooting.
Q. Two persons?
A. Yes, sir.
Q. Men or women?
A. Both was men.
Q. How near to you did they pass?
A. Well, I was walking, at the time when they was coming towards me, I had got in the middle of the street. I heard them running towards me; I walked back on the sidewalk.
Q. How near were you to them when they passed?
A. Well, they was more on the south side of the street; I was on the sidewalk.
Q. About how many feet?
A. I think twenty or thirty feet from me.
Q. How were they dressed?
A. They was dressed in dark clothes, I think.

93 Q. Notice their hats?
A. The one next to me had on a black hat.
Q. Did you recognize either of these men?
A. One of them; the one next to me.
Q. Who was it?
A. Mr. Mattox.
Q. The man here?
A. Yes, sir.
Q. What if anything did you hear them say as they went by?
A. The one next to me said, "We have got them. We have got the son of a bitch." I don't know who it was they were speaking of.
Q. How soon was this after the shots were fired?
A. Immediately after the shooting.
Q. How long after that was it until you next saw Mattox?
A. Well, I can't say how long after that I seen him.
Q. How long had you known him before that time?
A. I was acquainted by sight directly after the country opened, he used to be an officer there.
Q. Had you seen him within a day or two prior to that?
Mr. JOHNSON. I object. The question is too leading.
(Overruled. Defendant excepts.)
A. I had seen him that evening.
Q. Where, that afternoon before the shooting, if at all?
A. I seen him down on Choctaw street.
Q. About what time?
A. I don't know the exact hour. I guess near between four and five.
Q. Who was with him when you saw him?
A. I think the same man was with him that night; he looked like the same man I met that day.
94 Q. What were they doing when you saw them that afternoon?
A. I think he had a Frenchman arrested; some of them called him a Bohemian; an old man from Kansas.
Q. He was a foreigner?
A. Yes, sir.
Q. Where did he live, with reference to where Mrs. Walker lived?
A. Sort of northwest, across the street.
Q. On the opposite side of the street?
A. Yes, sir.
Q. How much west?
A. Three, four, or five lots west.
Q. Blocks?
A. Lots west of her house.

Cross-examination of Elisha Hopkins by Mr. JOHNSON:

Q. Where did you live at that time?
A. I lived on Choctaw street, near the corner.
Q. Did you live west of Broadway, I mean east of Broadway?
A. Yes, sir.
Q. On which side of Choctaw street did you live?
A. North.

Q. How far did you live from the point at which Mullin lived at that time?

A. Well, I lives north of where he lived; right across the street from him?

Q. You were staying at this point at this time, on this night that you was on your way home?

95 A. Yes, sir.

Q. You were going there at that time you say you met those men?

A. Yes, sir.

Q. Do you know one J. L. Logan?

A. Yes, sir.

Q. Did you see him on that night?

A. I did.

Q. Were you, or not, with him at the time of this shooting?

A. I went by his house to get a book.

Q. Were you, or not, with him at the time of the shooting?

A. No, sir; I had started off.

Q. Where was his house?

A. On the corner of Choctaw and Robinson, at that time.

Q. Now, Robinson was the second street west of the place John lived; Broadway first, and then Robinson?

A. Yes, sir.

Q. On which side of the street did he live?

A. He lived on the east side of the street—of Robinson street.

Q. About a block and a half from where John was killed?

A. Near about; yes, sir.

Q. Is it not true that you were at Logan's house at the time the shooting occurred?

A. I had left.

Q. You were not there at the time the shooting occurred?

A. I had left Logan's house. I had started home. I was in company and I left them in a hurry and expected to overtake the company at the next corner.

Q. What kind of a house did Logan live in at that time?

A. Kind of a box house.

96 A. Little shacks?

A. Yes, sir.

Q. Had you been in his house that night?

A. I had.

Q. How long did you remain in his house?

A. Long enough for him to get the book and hand it to me.

Q. What book was it?

A. Sunday-school Bible I had left.

Q. Did you or not hear the shooting while you were there at Logan's.

A. I heard it on the way.

Q. How far had you gotten away from Logan's when you heard the shooting?

A. I was half way down the street from Logan's house, going towards Broadway.

Q. Let me ask you if it is not true that you were at Logan's at the time the shooting occurred? You and he went out and stood up by his house until after some men passed, going west?

A. No, sir.

Q. Is it not true that at that time you and he both remarked that you could not tell who these men were?

A. No, sir; I went and called Logan out.

Q. After the shooting?

A. Yes; I had come from Broadway.

Q. You went back after the shooting occurred and called Logan?

A. Yes, sir.

Q. How far down Choctaw street from Logan's had you gotten when you met these men?

A. To Broadway.

Q. How far had you left Logan's house when you heard the shooting?

97 A. I had gone nearly half a block.

Q. That is, going east?

A. Yes, sir.

Q. And you heard the shooting? Where had you gotten to when tehes men passed. going west?

A. Broadway.

Q. Which side were you at in Broadway?

A. I was in Broadway street when I heard them come running.

Q. Where were you when they passed you?

A. On the sidewalk.

Q. What sidewalk?

A. On the south side of the street.

Q. What street?

A. Choctaw.

Q. Were you east or west of Broadway?

A. Well, I was west of Broadway; that is, I had got in the edge of the street; I halted; I heard them running and I stepped back on the sidewalk on the west side of Broadway.

Q. It was after that you went to Logan's?

A. Yes, sir; I went back and called Logan out.

Q. I will ask you if you didn't say to Logan that some men passed you, running west, but you didn't know who they were?

A. I didn't say anything to him about the men. All I remarked while I was standing was, I said "it is a pity."

Q. After these men passed you there at the corner of Broadway and Choctaw, did you turn around and go at once to Logan?

A. After they passed me. Me and them got to Logan's together. They were in the street; I was on the sidewalk.

Q. How were they traveling?

98 A. When they struck the light of any house they would walk fast; in the dark of any place they would run.

Q. They would walk fast in the light of a house and run in in the dark.

A. Yes, sir.

Q. And you followed them up and got to Logan's place about as soon as they did.

A. I called Logan——

Q. You followed them up, travelling about as fast as they did?

A. Yes, sir.

Q. When they passed you you were on the south side of Choctaw?

A. Yes, sir.

Q. When you heard the shooting you were about half way between Logan's—that is, Robinson street and Broadway?

A. Yes, sir.

Q. As soon as they passed you you turned and went back?

A. Yes, sir.

Q. Did you go down from Logan's; as you walked down the street were you on the south side of the street?

A. Yes, sir.

Q. Walked on the sidewalk?

A. Yes, sir. You mean after they passed me?

Q. As you came down from Logan's, going east, did you walk on the sidewalk?

A. Only partly on the sidewalk; before I got to Broadway I got in the street.

Q. Where were you, on the sidewalk or in the street, when you heard the shooting?

A. On the sidewalk.

99 Q. Did you remain on the sidewalk from that time until you got to where they passed you?

A. No, sir; I got in the street.

Q. How far in the street?

A. I didn't notice that.

By the COURT. What is the purpose of this? Does it make any difference?

Mr. JOHNSON. I know it is not important now; I think it is further on.

Q. But before you met these men you had gotten back on the sidewalk; when they passed you you turned and followed them back and got to Logan's about as soon as they did, and you said to Logan, "It was a pity?"

A. When I was turning to go back——

Q. What did you say it was a pity?

A. I meant the expression they made; they said they had "got the son of a bitch." I heard the shooting. I said it was a pity.

Q. How long had you known Clyde?

A. Well, the first time I got personally acquainted after the difficulty with him and the other gentleman.

Q. Him and Howard?

A. Yes, sir.

Q. Had you ever been brought in contact with him or ever been with him up to this night?

A. No, sir.

Q. Had you ever been personally acquainted with him or ever conversed with him?

A. Before which night?

Q. Before the night that John was killed.

100 A. Yes; I have spoken to him.

Q. How many times in your judgment had you seen him before that night?

A. I had seen him several times; visited him while he was sick.

Q. What was the character of the night as to light or darkness a dark night?

A. Yes, sir.

Q. These men were twenty-five or thirty feet from you when they passed you?

A. Yes; about that.

Q. Twenty-five or thirty feet away? Could you tell in the darkness what kind of clothes these men had on?

A. Well, by the light of the houses——

Q. Were there any houses along there had lights shining out into the street at that time?

A. Logan's house; the door opened east so his light shone down the street; pretty near struck Broadway.

Q. Logan's? From his little house up on Robinson and Choctaw the light shone to Broadway?

A. Yes, sir.

Q. The house was lighted up?

A. Yes, sir.

Q. The door open?

A. Yes, sir.

Q. What kind of a light was it?

A. I think a lamp.

Q. Did these men pass through the light of this lamp?

101 A. Yes, sir.

Q. Was that the time you recognized Clyde?

A. They passed through the lights.

Q. One of them had on a dark, broad-brimmed hat and had on dark clothes?

A. I recognized the one next to me.

Q. And you recognized him as Clyde?

A. By his voice.

Q. You did not know it was Clyde by what you saw, but you recognized him by his voice?

A. Yes; I recognized him by his voice.

Q. As a matter of fact, by these men walking along you could not tell who they were by the light?

A. Yes, sir.

Redirect examination by Mr. ADY:

Q. Do you mean you could tell or not?

A. The one I knew, I could tell; the largest one I didn't know.

Q. From what you saw of him and heard him talk, you were satisfied who it was?

A. Yes, sir.

LIZZIE WALLS, a witness on behalf of the prosecution, being first duly sworn, testifies as follows:

Direct examination by Mr. ADY:

Q. State your name, please.

A. Lizzie Walls.

102 Q. Where do you live?
A. In Oklahoma city.
Q. Do you remember the killing of John Mullin?
A. Yes, sir.
Q. Where were you that night?
A. I was at church.
Q. Was the shooting before or after church?
A. After.
Q. You were present when the shooting was done?
A. I wasn't right there; just across the street.
Q. In the house or out of it?
A. I was in the house when the shooting was done.
Q. Were you one of the women that screamed in the street?
A. I wasn't the one that screamed, but I was with the one that screamed.
Q. Who was it that screamed?
A. Laura Lawrence.
Q. You say you had been at church; where were you going?
A. Going home.
Q. Where was your home?
A. Frisco street.
Q. Which direction?
A. Just the next street north.
Q. Which way were you walking when this occurred?
A. We were going east.
Q. You intended to go east to what street?
A. We had to go east about a block and a half, and then we had to go north a block before we got home.
Q. What was the occasion of that screaming; what caused it?
103 A. Two men run up behind us just as we got to the corner of Mrs. Adams' house; they run up and scared Laura and she commenced to hollow and scream and run around the house.
Q. Did you see the men?
A. Yes, sir.
Q. Did you know them?
A. No, sir.
Q. Were they white or colored?
A. White.
Q. You say Laura did the screaming?
A. Yes, sir.
Q. Did you hear her say then and there who they were?
A. No, sir; she didn't know who they were, neither.
Q. Did you hear John Mullin or anybody say anything to them?
A. Yes, sir.
Q. What did you hear?
A. When she hollowed so, he came to the door and asked her what was the matter, what was out doors; I said, "There is some men after us," and he said, "You had better go on and let them women alone." The men commenced cursing at him and turned towards the way we came from, then went back towards him. We went in the house. That is all I saw.
Q. That is all you saw or heard?
A. Yes, sir.

Q. What direction were those men going when you last saw them?
A. They started back aways; after this man spoke to them they turned and then went towards him.
Q. How were they as to being large or small men?
A. They both looked alike to me. Just common sized men, dressed alike.
Q. How were they dressed?
104 A. Had on dark clothes, was about all I could tell. Dark clothes and dark hats.
Q. Did you know Mattox before that time?
A. Never seen him before; if I did, I didn't know him. That is all.

GEORGE THORNTON, a witness on behalf of the prosecution, being first duly sworn, testifies as follows:

Direct examination by Mr. ADY:

Q. State your name to the jury, please.
A. George E. Thornton.
Q. Where do you reside?
A. In Oklahoma city.
Q. Since how long have you resided there?
A. Since the spring of 1888, I have been there.
Q. Since what time have you known Clyde Mattox?
A. I became acquainted with him shortly subsequent to the opening, sometime about the first of May, 1889.
Q. Did you become well acquainted with him?
A. Fairly well; yes.
Q. What position were you occupying at that time?
A. I was deputy United States marshal, under Marshal Jones, of the district of Kansas and the Indian Territory.
Q. From the time you got acquainted with Clyde up to the time of the killing of John Mullin he lived in that community?
A. Yes.
Q. Met him frequently?
A. Yes; every day or so; sometimes oftener.
105 Q. Do you remember the killing of John Mullin?
A. Yes, sir.
Q. Remember the date?
A. It was on the 12th day of December, 1889.
Q. What time in the day.
A. It was about 10:20 p. m.
Q. Where were you at the time the shooting occurred?
A. I was in my office on Broadway, between Main and First.
Q. How far from the place of shooting?
A. A trifle over half a mile.
Q. What first attracted your attention?
A. Three shots.
Q. About how rapidly did they occur?
A. (Witness claps his hands.)
Q. Upon hearing these shots what did you do?
A. Locked up my writing desk and went toward where they came from.
Q. On your way down there did you meet anyone?

A. Yes; I met Walter Vends and Thomas Whitman.
Q. About where did you meet them?
A. At the corner of Broadway and California avenue.
Q. How far was they from this place of the shooting?
A. Just about a half a mile.
Q. From the place of the shooting?
A. Yes, just about.
Q. What direction were they going?
A. North.
Q. Rapidly?
106 A. I think so. It wasn't pitch dark, but still so dark I couldn't see far. When I first saw them I noticed they were walking fast.
Q. You may state whether or not you gave Tom Whitman any instructions as to telling who did this shooting?
A. I did.
Q. What instructions did you give him?
A. I first asked him to make a statement about the shooting; after he had finished that I told him not to say anything about it to anyone unless he knew them to be a reliable officer.
Q. Did you give anyone any instructions as to putting Tom into jail?
A. Yes, sir.
Q. Did you order him put in jail for any offence?
A. No, sir; jusy for protection to his life.
Q. Did you then begin to search for anyone?
A. I did.
Q. Who for?
Mr. JOHNSON. I object.
Mr. ADY. I claim it is competent, and it is my purpose to show that this was almost instantly after the shooting. I desire to prove by this witness that he began the most thorough search for the defendant and kept it up for a number of days, for the purpose of showing that the defendant fled, if I can.
By the COURT. If you are going to connect that with the defendant it is all right.
Mr. ADY. I do expect to connect it thoroughly.
By the COURT. You may ask the question.
Mr. JOHNSON. I submit for him to state that he began a search
107 for any particular person would not illustrate it. It carries force with it what Thornton's opinion might have been. I think it ought not to be given to the jury.
By the COURT. I think the better way would be to modify your question and show what the officer did.
Q. You may state what search, if any, you made for the defendant immediately after the shooting.
A. For the defendant?
Q. Yes, for the defendant.
A. I went to the north bound local train—it came in just immediately after I left Vends and Whitman—and searched the passenger coach, then through the freight cars, and then I told the conductor I would like to ride on the train until I reached such a point as I might think proper to get off. He told me to go and see the engineer and ask him to stop wherever I asked him to.

Q. It is unimportant to give the conversation.

A. I rode up in the engine until I decided there was no use in going farther; he slacked the train, I jumped off and went around through town and then I met a friend of mine named Tom Wade.

Q. What was he?

A. He was Deputy United States Marshal at that time from the Sac and Fox reservation. I told him——

By the COURT. Never mind the conversation.

Q. If you got anyone to aid you in the search state the name?

A. I suppose there were twenty-five or more people out that night. I think I notified about fifteen.

Mr. JOHNSON. I submit that this does not prove——

108 A. Some of the merchants and police and one man that was posse under me, and I told them to look for Clyde Mattox and Doc Keeley. I was looking for them myself.

Q. How long did you keep up the search for the defendant?

A. I might say for about two days specially; after that, just whenever I thought there was an opportunity of seeing him.

Q. Did you know where he lived at that time?

A. Yes, sir.

Q. Did you go there to search?

A. I did.

Q. Did you more than go; did you stay around there?

A. Yes, sir.

Q. About how long after that did you next see Mattox?

A. I not being an officer under this court at that time, did not pay special attention, but I think it was about two weeks; might have been longer.

Q. Did you know of his being in town about two weeks after?

A. Near that time.

Q. Who had him in custody, if anyone did?

A. The first time I saw him to know him he was walking up the street; was with his mother; and next I saw him in custody of George Walker.

Q. After that do you know whether he remained in custody or not?

A. I believe he did for a while; then, I think, he escaped.

Q. Do you know how long he was gone after his escape?

A. No, sir.

Q. How long have you been in that country?

A. I went to the Territory first in '79.

109 Q. Are you familiar with the lay of the land?

A. Quite familiar.

Q. Do you know the course of the Canadian River?

A. Yes; the general course.

Q. Which direction is this from the Canadian River; north or south?

A. North 173 miles.

Q. Which direction is it from the hundredth meridian; that is, the western boundary of the Territory; which direction is this land where the killing occurred from the hundredth meridian?

A. East.

Q. East in the lands occupied by the civilized tribes?

A. No, sir; in Oklahoma proper.

Q. Did you serve the process from this court?
A. I did; yes; under Marshal Jones.
Q. State whether or not it was in a territory attached to this court.
A. It is or was what is now under the jurisdiction of this court.
Q. There is a branch runs near Oklahoma City?
A. Within one mile.
Q. Can you indicate on a little piece of paper about how it runs?
A. Yes, sir. [Witness takes paper and draws.]
Q. Which one of these lines represents the North Canadian [examining paper]?
A. The north.
Q. That one?
A. Yes, sir.
110 Q. This point represents Oklahoma City?
A. Yes.
Q. What does this point represent?
A. Morgan Wright's place.
Q. What direction is that from Oklahoma City?
A. Nearly due west.
Q. About how many miles?
A. I think it is about a mile and a half.
Q. Now, going west on Choctaw street, the street on which Mrs. Walker's house stood, what direction is Morgan Wright' place?
Mr. JOHNSON. I don't see the purtenancy of that.
Q. Going west on Choctaw street, the street on which Mrs. Walker's house stood, what direction from the west end of that street is Morgan Wright's place?
A. Nearly west.
Q. Were you familiar with the condition of that river at that time?
A. Somewhat; it was about three days before I saw it. I believe there was considerable water in it at the time.
Q. There is the Chickasaw Nation down there, is it not?
A. Yes, sir.
Q. What direction is it from Oklahoma City?
A. A little southwest.
Q. Going due south anywhere you strike it? Now, Purcell is down here somewhere, isn't it?
A. Thirty-four miles south.
Q. Is the Chic'asaw Nation south of Purcell?
A. Yes; Purcell is in the Chickasaw.
111 Q. South of the South Canadian?
A. Yes, sir.
Q. What would be the direct course to the Chickasaw Nation from Oklahoma City?
A. South or southwest, according to the point you wanted to strike.
Q. Was there a road that run past Morgan Wright's to the Chickasaw Nation?
A. A person could take any of those roads running south or southwest and get there.

Cross-examination of George Thornton by Mr. JOHNSON:

Q. What direction is California street, the street on which you met Tom and Vends from Reno avenue?

A. Due north.

Q. How far; what distance?

A. One block.

Q. Do you remember what place of business was on the northeast corner of Broadwoy and Reno Avenue at that time?

A. I believe some one had a real estate office there at that time.

Q. The northeast corner?

A. Yes; that would be directly north of the hardware store.

Q. I mean the northwest corner of Reno and——

A. You said California. You mean Reno?

Q. Northwest corner of Reno and Broadway?

A. Housell's drug store.

Q. And the point at which you met Tom was one block north
112 of that?

A. Yes, sir.

Q. What direction was the point in which the shooting was done from Housell's drug store?

A. Nearly due south; just a trifle east.

Q. You met those parties going north on Broadway?

A. Yes, sir.

Q. Did you or not on that night go to Clyde's home?

A. Yes, sir.

Q. Whom did you see there, if anyone?

A. The light was turned low in the front room; I don't believe I saw anyone inside of the place.

Q. With whom did you speak, if anyone, there at that time at Clyde's home? I want to ask you if you remember now speaking to Mrs. Hatch?

I believe I spoke to the lady that night, as near as I can recollect. I will state the conversation when you ask the question.

Q. Do you now remember what you did say?

A. Some common-place remark; didn't amount to anything, just merely anything common-place, to see what I could learn.

Q. You say the first time you saw Clyde, after this shooting, you saw him in company with George Walker?

A. No, sir; I didn't say that.

By the COURT. In company with his mother the first time.

Q. With his mother?

A. I believe so.

Q. How long was it after the time you saw him with his mother you saw him with Walker?

113 A. I think it was the same day.

Q. How long is it, your remembrance, that was after the killing of Mullin?

A. It seems to me it was a couple of weeks; might have been a little longer.

Q. When did the killing occur?

A. On the night of the 12th of December, 1889.

GEORGE WALKER, a witness on behalf of the prosecution, being first duly sworn, testifies as follows:

Direct examination by Mr. ADY:

Q. Is your name George L. Walker?

A. Yes, sir.

Q. Do you remember the circumstance of the killing of John Mullin; remember the fact that he was killed?

A. Yes, sir.

Q. What official position were you holding then?

A. I was deputy in charge of that part of the Territory.

By the COURT. Do you mean deputy United States marshal?

A. Deputy United States marshal in charge.

Q. Were you in Oklahoma City at that time?

A. No, sir.

Q. How soon afterwards?

A. I think it was four or five days after that time.

Q. When you returned to Oklahoma City was there any search made for the defendant?

A. Well, the deputies were looking for him; looking for the parties that did the killing.

Q. Do you know about how long it was from the time Mullin was killed until you next saw Mattox?

114 A. Well, it was three or four weeks; I can not remember just how long it was.

Q. Under what circumstances did you see him first?

A. I saw him on the street, on some street in Oklahoma city, in charge of a couple of guards.

Q. Who were they?

A. I don't know; I can not tell you the names; they were simply guarding him for the deputy that had arrested him.

Q. Had you passed possession of him before that time?

A. No, sir.

Q. How long did he remain in charge of the officers at that time?

A. I think he got away that night; left that night.

Q. After leaving that night how long was it until you saw him again?

A. About, I think about two weeks.

Q. Then where did you see him?

A. He came to me and gave himself up; surrendered in Oklahoma city.

Q. Was there any one with him when you saw him under guard the first time?

A. Yes, sir.

Q. Who; I mean any other person?

A. Doc Ealy.

Q. Have you since found or seen Doc Ealy?

A. No, sir; never have been able to find him.

Cross-examination of George Walker by Mr. JOHNSON:

Q. Mr. Walker, do you now remember the date on which Clyde surrendered to you?

115 A. No, I cannot tell you what date it was.

Q. Could you—have you any convenient means of informing yourself as to the date?

A. I have it in a book somewhere, but I hav'n't the book here; it is at home.

Q. According to the best of your memory, was it on the 23d day of January, 1890?

A. I can not tell you; I think, though, that it was somewhere about that time; somewhere along there; I don't remember just the time.

Q. At what particular point were you when Clyde surrendered?

A. In your office; at Guthrie's office; I don't remember whether you were in partnership with him or not; it was in Guthrie's office.

Q. Who accompanied him on that occasion?

A. His mother.

Q. On Main street?

A. Yes, sir.

Q. You speak of having seen him in custody before; do you know whether or not he surrendered in the first instance?

A. I do not know.

Q. Of your own knowledge you do not know?

A. I do not.

Mr. Ady hands witness a paper.

Redirect examination by Mr. ADY:

Q. Will this aid you in fixing the date? That warrant is dated the 24th of January, and the preliminary took place the first or second of February.

116 (Witness examines paper.) This is dated on the 24th day of January.

Q. Was he in custody then?

A. Yes; that was the time I brought him to Wichita.

Q. Then it was about the 24th of January?

MORGAN WRIGHT, a witness on behalf of the prosecution, being first duly sworn, testifies as follows:

Direct examination by Mr. ADY:

Q. Is your name Morgan Wright?

A. Yes, sir.

Q. Where do you live, Mr. Wright?

A. A mile and a half west of Oklahoma city, in Oklahoma country.

Q. Do you remember of hearing of the death of John Mullin about the time that he was shot, a colored man in Oklahoma city?

A. Yes, sir; I heard he was killed; I think it was about the time he was shot; shortly after.

Q. You remember the month it was in?

A. It was about the latter part of 1889, I think.

Q. Did you know Clyde Mattox at that time?

A. Yes; I think I did.

Q. How long had you known him?

A. Since the opening of the country.

Q. Did you know Doc Ealy?

A. No, sir.

Q. State whether or not you saw the defendant that night.

117 A. I could not say for sure it was that night. I could not be certain as to that. I was up town I think it was the next day or the

next day afterwards, I could not say positive, and heard there was a colored man shot; I suppose that was the man you had reference to.

Q. Did you see him at night; did you see Clyde at night?

A. Yes, I think so.

Q. Anyone with him?

Mr. JOHNSON. Wait a moment. I do not understand that he said he saw Clyde that night.

By the COURT. The point he was uncertain was the day or the day after.

Q. What time in the night was it you saw him?

A. I had gone to bed; some voices woke me up.

Q. Go ahead.

A. I stepped to the door and——

Mr. JOHNSTON. I object to any statement unless he identifies the voice as that of the defendant.

Mr. ADY. We will. He will identify the man if you give him time.

By the COURT. Proceed, witness.

A. There was a couple of men at the door.

Q. What?

A. There was two men outside; I don't recollect how close I was to them. It was sometime past twelve o'clock. I could not say as to that exactly, nor just how close I was to them. There was stranger there that I never saw that I know of before.

Q. If you knew either of them, who was it?

A. I think Mattox was one.

118 Q. Well, do you know; you say you were acquainted with him?

A. It was a little dark; I think he was.

Q. What did they want? Go on and tell.

Mr. JOHNSON. We object, upon the ground that its relevancy is not shown.

(Objection overruled by the court. Defendant excepts.)

Q. Go ahead and tell.

A. They wanted to cross the river.

Q. Just go ahead and tell everything he said and you said, and what you did.

A. They didn't cross the river. The best horse I had was a blind horse, and he didn't go over.

Q. I want you to tell what they said to you and what you said in return, and what you did. Go ahead.

A. My blind horse—they didn't want to cross the river on him, so they turned back towards town.

Q. Who asked you to take them across the river?

A. I could not mind which one it was; they were both talking.

Q. Did they state to you any reason why they wanted to cross the river?

Mr. JOHNSON. I object to the question as incompetent and leading.

(Objection overruled. Defendant excepts.)

A. The stranger said he had shot a nigger.

Q. What did he say? Did he say he had shot a nigger? Give his language.

A. I can not be positive whether he said they or himself, but I think he said he shot a nigger.

119 Q. The stranger said that?
A. Yes, sir.
Q. Was Clyde with him?
A. He was near.
Q. Did you put them over the river?
A. No, sir.
Q. Did they want anything else besides going over the river? What, if anything, was said about horses?
A. I told them he was able to carry a man about as fast as they could walk.
Q. He wanted your horse?
A. This man or party.
Q. After you were through talking with them, what became of them?
A. They went away; I think towards town.
Q. Towards what town?
A. Oklahoma City.
Q. How far from your place was Oklahoma City?
A. A mile and a half.
Q. What river was this they wanted to cross?
A. The North Canadian River.
Q. How was the water in the river at that time?
A. About two and a half feet deep.
Q. Was there a ford at your place?
A. Yes; that is, close.
Q. When did you next see these men again? About when? I do not ask for the day and date.
A. It was some time afterward; I could not say just——
Q. Of course it was.
120 By the COURT. Give your best recollection.
Mr. ADY. Fifteen or twenty minutes, or how long?
A. I suppose it was a week or two. At least I took it to be the same men; I didn't know.
Q. What time in the day and under what circumstances did they come, and what did they say to you—these men you are talking about now, who were they?
A. As I have said, one of them was a stranger.
Q. Who was the other one?
A. Clyde Mattox.
Q. What time was it?
A. In the morning.
Q. About what time; early or late, or how?
A. Pretty early in the morning.
Q. How did they come to your place?
A. Horseback.
Q. Which way did they come from?
A. I think they came from the south.
Q. What road was there leading to the south?
A. The section line runs past my place south; I am not sure about the township, but I think the township line.
Q. What colored horses were they riding?
A. One of them was a bay horse, and the other was a sorrel—either a light bay or a sorrel.

Q. Notice any marks or brands on these horses?
A. No, sir.
Q. Did you know the horses?
A. No, sir.
Q. What is your best recollection of the color?
121 A. That is my best recollection.
Q. One was bay?
A. And I think the other was sorrel; I will not be sure.
Q. Did you notice which was the largest?
A. I think the sorrel.
Q. Did you notice whether they were geldings, or what?
A. I think they were; I didn't notice positive.
Q. What did they say to you on that occasion, if anything?
A. They said they wanted to get some breakfast. They had been riding at night, and wanted some breakfast; they were hungry.
A. Is that all?
A. And wanted some hay for the horses; asked if they could not let the horses eat at my haystack. They also put the saddles off and let them eat, if I recollect right. There was a little fence around the haystack, and they tied them to the fence and gave them hay.
Q. What did they say they were going to do, if anything?
A. Well, my understanding was—I can not be positive—but think they were going to give themselves up.
Q. Did they say to you what for?
A. I don't think that they did.
Q. After breakfast what did they do?
A. They remained around there a while, I didn't mind just how long, and went away.
Q. That is good; what did they do?
A. Went away.
Q. Which direction?
A. I think they went east.
122 Q. Which way was the town—Oklahoma?
A. East.
Q. Go on horseback?
A. No, sir.
Q. What did they do with the horses?
A. Left them there.
Q. How long did the horses remain there?
A. Until the next morning, if my memory serves me right.
Mr. JOHNSON. I object.
(Objection overruled. Defendant excepts.)
Q. Did anyone come for them?
A. Yes, sir.
Q. Who?
A. W. H. Hart.
Q. Take them away?
A. Yes, sir.
Q. Do you know what his business is?
A. Yes, sir; I think I do.
Q. What is it?
Mr. JOHNSON. I object.

By the COURT. The objection is overruled.
(Defendant excepts.)
A. He sells whiskey and runs a profane house.
Q. So he took the horses away?
A. Yes, sir.
Q. Was there anybody present when he took them away besides yourself?
A. Yes.
123 Q. Who was there?
A. Old man Nerron and his two sons.
Q. Did these men say why they would leave the horses at your place?
A. I don't think they did.
Q. Did you know they intended to leave them before they went away?
A. No, sir; I don't think I did; I was busy that morning.
Q. You say Hart's name was W. H.?
A. W. H. Hart. I was busy raising a bridge across the North Canadian River, and that old gentleman, one of his sons was a carpenter, and they had been doing mortising. I was busy and didn't pay any attention.
Q. At the time you have spoken of, were you friendly or unfriendly with the defendant?
A. Well, I just merely saw the gentleman.
Q. I want to know whether you were friendly or unfriendly?
A. I would be just about the same as I would be with any other stranger. I had met him several times in Oklahoma city. I was a stranger and I had heard of him before that.

Cross-examination of Morgan Wright by Mr. JOHNSON:

Q. How long was it after the opening that you became acquainted with with Clyde Mattox?
A. I could not say exactly.
Q. Can not you form an idea about how long it was?
A. I had seen him a good many times before I became acquainted; I don't mind just how long.
By the COURT. Give your best recollection; that is all a man can do.
A. It was only a short time.
124 Q. Had you prior to this occasion on which you say that he came to your house had any business relations with him of any kind or character?
A. I don't think I had.
Q. Had you at any time been thrown into association with him?
A. I think I went to his house one time; to his tent, rather, if I recollect right; this is the best of my knowledge; I went with W. H. Hart.
Q. The man of whom you spoke awhile ago?
A. Yes, sir.
Q. You went to his tent?
A. Yes, sir; I think he kept a boarding tent.
Q. His mother kept a boarding tent?
A. If I recollect right his mother just had got there; I took it to be her.
Q. As a matter of fact, that was a short time after the opening, wasn't it?

A. I think it was.

Q. Had you ever seen Clyde Mattox prior to that time?

A. I never had to know him.

Q. How many times after that and prior to this night that you speak of had you been brought into contact with him or talked with him on any business of any kind or character or had any business of any kind or character with him?

A. I don't think that I ever had that I know of.

Q. I will ask you how many times prior to the occasion on which he and Howard had trouble you had seen him?

A. I could not say.

Q. Had you or not after that occasion seen him, prior to this occasion that he came to your house?

125 A. How was that?

Q. Had you from the date of the trouble with Howard down to the night and the occasion on which they came to your house seen him?

A. I did't see him often.

Q. Had you within that time seen him at all?

A. I could not testify that I had; I don't mind.

Q. I will ask if you don't know the fact to be that he lay wounded for a period of nearly two months next after the 14th of June when you didn't see him at all?

A. Since you have spoken and refreshed my mind I was there once.

Q. While he was wounded?

A. I think so.

Q. Where did you see him at that time?

A. At the guard tent.

Q. He was lying in bed at that time?

A. Yes; I recollect seeing him one more time.

Q. After the time that you saw him in the guard tent down to the night on which they came to your place can you be certain that you ever saw Clyde Mattox?

A. I could not say positively.

Q. Not a very long time after the opening you went on one occasion to the boarding tent and saw him there, when you went in company with Hart?

A. I may have seen him oftener, but I don't mind it now.

Q. Again you saw him while he lay there wounded in the guard tent?

A. Yes, sir.

126 Q. And the next time you can be certain of was the night they came to your house?

A. That is all I recollect at present.

Q. I will ask you, had you ever been an associate of Clyde, going with him, or in his company?

A. No, sir.

Q. I will ask if you had become particularly acquainted with him? Familiar with him in any way or manner?

A. No.

Q. Are you prepared to say that you knew him well enough to determine who he was by the sound of his voice?

A. Well, I took it to be him.

Q. The question is asked you if you want to say that you knew him well enough to determine who he was by the sound of his voice?

A. No; I don't know that I did.

Q. On this night that the parties came to your house, about what time in the night was it, according to the best of your recollection?

A. It was before twelve o'clock; the fore part of the night; I suppose it was ten or eleven o'clock.

Q. Would you say it was ten or eleven; which?

A. I don't know.

Q. What is your best judgment?

A. I think it was between the two.

Q. How far did you live west of Oklahoma City?

A. A mile and a half.

Q. Did you retire when they came to your house?

A. I did.

Q. Did these parties come into your house?

127 A. No, sir.

Q. Did you go outside?

A. I did.

Q. Dress yourself and go out in the yard?

A. Yes, sir.

Q. How close were you to these parties on that night?

A. I don't recollect.

Q. I would like to have your best judgment.

A. I think I was pretty close; tolerably close; within a few feet.

Q. Can you tell how these two men, or either of them, was dressed?

A. No, sir; I would not pretend to say.

Q. No remembrance whatever?

A. No, sir.

Q. Do you know whether or not you observed their clothing on that night?

A. I don't think I looked at their clothing at all.

Q. It was dark, was it?

A. Yes, sir.

Q. And you think one of these men was Clyde Mattox?

A. Yes, sir.

Re-direct examination:

Mr. ADY. Did you go to the stable to get up the horses?

Mr. JOHNSON. I object to Mr. Ady's recross-examining any cross of mine. It is new matter.

Mr. ADY. The question should have been asked on the direct examination; I will ask leave to recall him.

By the COURT. You may.

Q. Did you go to the stable and saddle the horse?

A. Yes, sir; I got my blind horse.

Q. Did you saddle him?

A. No, sir.

128 Q. Did you progress towards the river from your place?

A. Very little.

Mr. JOHNSON. I object.

Q. How far did you go with him?
A. Fifty yards, I expect.
Q. How far was the river from your place where you kept the horses?
A. About three hundred yards.
Q. Were you riding or walking towards the river?
A. Leading a horse with the bridle.
Q. Were they walking along with you?
A. Yes, sir.
Q. How often had you seen Clyde prior to the killing of Howard?
Mr. JOHNSON. I object. It is entirely new matter.
By the COURT. He has recalled the witness.
Mr. JOHNSON. He has been examined.
By the COURT. He has recalled him.
Q. About how often had you seen Clyde prior to the killing of Howard?
A. O, not very often; I could not say.
Q. A dozen times?
Mr. JOHNSON. I object.
(Objection overruled. Defendant excepts.)
A. I don't know that I did see him a dozen times, but I seen him probably five or six times.
Q. After that shooting, when he was lying sick, how often did you visit him?
A. I recollect of going once, at present.
129 Q. Recollect what?
A. Of going once.
Q. After he got better, so as to be able to be up, did you see him any before the killing of Mullin?
A. I could not say positive; I think I did.
Q. Where do you think you saw him?
A. On the streets of Oklahoma.
Q. Do you remember when he was bailed out of jail for that offense; how long after the killing of Howard?
A. Did I understand you to say after he killed Howard or after the killing of Howard; which was it?
Q. Either way you please.
By the COURT. After that time.
A. I thought you said after he killed Howard; was that right?
Q. What is the matter? You know there is no controversy; I want to know about the time.
By the COURT. The point is to fix the time, and from that date ascertain how many times you met this defendant.
Q. The last question I asked you was how many times you saw him after he was bailed out of jail for the killing of Howard until Mullin was killed?
By the COURT. Between those two dates how many times did you see him?
A. I could not say positive.
Q. Did you see him at all?
A. To the best of my recollection I seen him once in a while.

Recross-examination of Morgan Wright by Mr. JOHNSON:

130 Q. I will ask you if you now remember when it was that he was able to be brought to Wichita and committed to jail after the fight between him and Howard?

A. No; I don't know exactly.

Q. Do you now remember how long he was here in Wichita before he was bailed?

A. No; I do not.

Q. I will ask you if you remember how long he was in Oklahoma city after he came home on bail prior to the time of the killing of Mullin?

A. I do not know how long.

Q. Do you now remember whether you saw him after his return from Wichita, and before the killing of Mullin?

A. I could not say positive.

That is all.

Mr. ADY. I ask the indulgence of the court; there is another point I wish to ask.

Mr. JOHNSON. I object.

By the COURT. What is the question?

Q. What, if anything, did these men say when they turned away after they had concluded not to cross the river, about how they would get a team?

Mr. JOHNSON. I object.

(Objection overruled; defendant excepts).

A. I could not say positive as to that.

Q. State your best recollections as to that.

Mr. JOHNSON. Unless he knows what they said, I don't think he ought to tell. He says he does not know.

131 By the COURT. Answer if you know, if you don't, say so.

A. I could not say positive.

Q. I didn't ask you to say positive; I want the substance of what they said.

Mr. JOHNSON. His answer means that he does not know what they said.

By the COURT. That is a question for the jury.

By the COURT (to the witness). You may answer the question if you can.

A. We talked a little something about it; I don't mind what they did say; something about getting a team. I would not like to say now just what it was they did say.

JOHN NERRON, a witness for the prosecution, being first duly sworn, testifies as follows:

Direct examination by Mr. ADY:

Mr. ADY. I offer this witness.

Mr. JOHNSON. We object upon the ground that no notice has been served.

By the COURT. Marshal informs me that it was served.

Mr. JOHNSON. Three names were introduced after it was returned. The defense offered this.

By the COURT. I know what it is at law, simply at law; it has no foundation, in fact.

Mr. JOHNSON. I understand that it is technical.

By the COURT. The evidence before the court is the endorse-
132 ment of the notice with the names thereon; second, the statement of the district attorney that he prepared these additional names with this witness. Mr. Soper says that he did prepare such a notice; that he handed it to the deputy marshal.

Mr. SOPER. I wrote the first one; the second Du Bois wrote.

By the COURT. Soper says the names were there.

Mr. JOHNSON. We object and except.

Q. Is your name John Nerron?

A. Yes, sir.

Q. How do you spell it?

A. Narron.

Q. Where do you live?

A. Two miles west of Oklahoma city.

Q. Do you know Morgan Wright?

A. I do.

Q. Do you remember being at his place along in the fore part of January, a year ago last January, doing any building of a bridge with your father and brother?

A. I remember being there the fore part of January or the latter part of December.

Q. While you were there did anyone come after horses?

A. I do not know; I could not be positive whether anyone came after horses or not.

Q. Did they come and get horses?

A. I could not be positive.

Q. What do you know about it?

A. I frequently saw people; it was on a ford of the river.

Q. Did you know Hart?

A. I did; I do.

133 Q. Do you know about Hart's coming to take horses away?

Mr. JOHNSON. I object as immaterial.

(Objection overruled; defendant excepts.)

Q. Did you say he came there?

A. Yes; I remember of seeing him there while we were working at the bridge.

Q. Did you know what he was there for from any statement by him?

A. I do not know.

Q. Did you hear a conversation between him and Wright about some horses?

A. Not that I remember of about any horses.

Q. Did you see any horses there—a span—a bay and a sorrel?

Mr. JOHNSON. I object to that.

By the COURT. On what ground? It is material.

Mr. JOHNSON. I do not see its connection.

By the COURT. I overrule the objection.

Mr. JOHNSON. I except to the ruling.

Q. Hitched to the haystack?

A. It seems to me that I did, but I would not be positive, because I knew nothing of it nor paid no attention to it, but it seems to me that I did.

Q. Do you know whether Hart took these horses away from the haystack?

A. I don't know.

Q. Did you hear Hart state what he was after?

A. I did not.

That is all.

134 JOSEPH MORRIS, a witness on behalf of the prosecution, being first duly sworn, testifies as follows:

Direct examination by Mr. ADY:

Q. Where do you live?

Mr. JOHNSON. I object to the production of this witness upon the ground that his name was not introduced on it at the time of its return. No notice has been served on the defendant of his production; I want to save the objection.

By the COURT. The objection is overruled for the reason that it is made to appear to the court by the statement of the deputy marshal and the assistant United States attorney that the name of this witness wa sserved upon the defendant two days prior to the commencement of the trial.

Mr. JOHNSON. We except and object to the ruling.

By the COURT. To which ruling the defense by counsel excepts.

Q. Is your name Joseph Morris?

A. Yes, sir.

Q. Where do you live?

A. In the Pottawatomie Nation now.

Q. Live in the Pottawatomie Nation?

A. Yes, sir.

Q. How long have you lived there?

A. I have lived there, to make it my home, only about two weeks; since it opened up. I went to live there since it opened for settlement.

Q. Where did you live in December, 1889?

A. I was stopping at my father's house in the Pottawatomie country then; I wasn't living anywhere.

135 Q. You say at your father's house?

A. Yes, sir.

Q. What direction is that country from Oklahoma city?

A. Southeast.

Q. About how far from Oklahoma city?

A. Where I was I suppose it is about 75 miles.

Q. About how far from Guthrie?

A. I declare I don't know; it is somewheres in the neighborhood of 90 miles, I suppose.

Q. Southeast?

A. Yes, sir.

Q. At that time did you know Clyde Mattox?

A. No, sir.

Q. Never had met him so far as you know?

A. No, sir.

Q. Did you know Doc Ealy?
A. No, sir.
Q. Do you remember about the latter part of December, 1889, two men coming—well, about the middle or latter part—two men coming to your father's place with a team?
Mr. JOHNSON. I object, as immaterial and irrelevant.
(Objection overruled. Defendant excepts.)
Q. Do you remember it?
A. Yes, sir.
Q. What kind of a team were they driving? What color?
A. One was a dark bay horse and one was a brown horse.
Q. What was the size and appearance of the men?
136 Mr. JOHNSON. I object, as immaterial and irrelevant.
(Objection overruled. Defendant excepts.)
Q. You may answer the question.
A. Well, sir, I could not tell you what size they were, I never paid any attention to the men, I only seen them. I wasn't with them over five minutes.
Q. Did you make a trade with them?
A. I did.
Q. What sort of a team did you trade to them?
A. Two pair saddle ponies. One was small the other was a tolerable good sized pony.
Q. What color were your ponies that you traded them?
A. One of them was a light sorrell, black mane and tail honey, the other was a dark bay, ball-faced.
Q. One was a sorrell and one was a bay?
A. Yes, sir.
Q. Did they *am*ke any statement why they wanted to trade?
Mr. JOHNSON. I object as immaterial and irrelevant.
(Objection overruled. Defendant excepts.)
A. Well, the team that they were driving was pretty well drove down.
By the COURT. No matter, simply answer the question.
A. No, sir.
Q. What condition was the team they were traveling with as to being tired?
Mr. JOHNSON. We object, as incompetent and irrelevant.
(Objection sustained.)
137 Mr. ADY. It is to show that they were trying to get out of the country.
Q. Now, how long did you have these horses that you traded for in your possession?
Mr. JOHNSON. We object, as immaterial and irrelevant.
By the COURT. You may answer the question.
(Defendant excepts.)
A. I could not exactly tell you; somewheres near about three weeks, as well as I remember.
Q. What then became of them?
Mr. JOHNSON. We object, as immaterial and irrelevant.
(Objection overruled. Defendant excepts.)
A. Doc East and another man come and taken them away from me.

Q. Did they bring your horses back?
A. Yes, sir.
Q. Who was the other man?
A. I could not tell you.
Q. Do you know him now?
A. No, sir.
Q. What for an appearing man was he?
A. I could not tell you that, it was dark when I seen them.
Q. You say they brought your horses back?
A. Yes, sir.
That is all.
No cross-examination.

T. H. EAST, a witness for the prosecution, being first duly sworn, testifies as follows:

Direct examination by Mr. ADY:

138 Q. State your name to the jury.
A. East, T. H.
Q. Where do you reside, Mr. East?
A. In El Reno, Oklahoma Territory.
Q. Do you remember of going through the Pottawatomie country in about the latter part of December or first of January, 1889; the latter part of December——
Mr. JOHNSON. We object to that.
Q. And taking a team of horses down there and getting another from a man by the name of Morris?
Mr. JOHNSON. Wait a moment. We do not find this name endorsed. Stand aside, Mr. East.
Witness withdraws.

Prosecution rests.

Mr. JOHNSON. I would like to have the witness Thomas Whitman recalled for cross-examination.
By the COURT. Will you open up new matter?
Mr. JOHNSON. It is new so far as the case is concerned; in a manner new.
It seems to me that the reason of this rule which excludes the introduction of witnesses whose names are not endorsed does not apply to Easy, who is a witness for the defense.
By the COURT. I think it does apply.
By the COURT. Who is it you want to have recalled? I am not going to open up new matter.

THOMAS WHITMAN recalled by Mr. Johnson.

Examination by Mr. JOHNSON:

139 Q. Tom, on the night that Mullin was killed did you see Thornton before or after you went to Dr. Housell's drug store?
A. Before.
By the COURT. That question was asked yesterday. He may answer the question.
Q. Where did you meet Thornton?

A. On the corner of Broadway and Reno, I believe.

Q. Broadway and Reno?

A. Yes, sir.

Q. Dr. Housell's store was on the corner of Broadway and Reno, wasn't it?

A. I don't think it was on the corner; right in front of, right by, Judge Tanner's real estate office.

Q. Did you go into Dr. Housell's store when you first went up the street?

A. No, sir.

Q. Tom, you know where Mrs. Hatch lives, in Oklahoma City?

A. I do.

Q. I will ask you whether or not you went to Mrs. Hatch's house in the month of June last, on a Saturday night, and asked her for some money——

A. No, sir.

Q. Wait till I finish my question; ——to buy something to eat for Sunday; said to her that you had been working for railroad men and they had not paid you, and you took for her a five-dollar bill and went across the street and bought some coffee and came back and she let you have a dollar.

A. She did not.

By the COURT. He has answered the question.

140 Mr. JOHNSON. I object.

By the COURT. You certainly will try to deal fairly. I hold the matter was gone into yesterday. I think you asked about that five dollars in at least four different ways. I do not like to have counsel say he does not propose to open up new matter and then do it. I am certain this matter was gone into yesterday. I watched the testimony as closely as it is possible for a man to do it.

Mr. JOHNSON. I think the court is mistaken.

By the COURT. I know I am not mistaken.

Mr. JOHNSON. I think that an examination of the record will show that I did not.

Q. I will ask you whether or not at a time about two weeks after that on a Sunday evening you went to Mrs. Hatch at the same place, Tom, and told her you wanted to talk with her, and in that conversation asked her to let you have twenty dollars for your wife to go to Birmingham, Ala., and also said to her in that conversation that you would never swear against Clyde, and that you were going to acquit him?

By the COURT. You need not answer that question.

By the COURT (to Mr. Johnson). I do not wish to be obliged to call your attention to the fact that you are not permitted to go into that matter. You asked about that yesterday, and you can not help but know yourself that you asked that question.

Mr. JOHNSON. This question is specific.

By the COURT. That was yesterday; it is the same matter, except you simply changed the form of your words to get at it.

Mr. JOHNSON. My only object is to be specific, so that when I come to the witness I can ask that question.

(Defendant excepts.)

141 Redirect examination of Thomas Whitman by Mr. ADY:

Q. Is it a fact that Mrs. Hatch has frequently sent for you to talk about your testimony and hunted you up?

A. Yes, sir; she has. She sent me to Mr. Johnson.

Q. You may state, Tom, whether during this whole time you have been in fear of Clyde Mattox, his mother, or other friends.

A. Yes, sir.

Cross-examination of Thomas Whitman by Mr. JOHNSON:

Q. When was it that Mrs. Hatch sent you to my house?

A. It was on Sunday evening, you recollect.

Q. Do you remember the conversation we had there?

A. Yes, sir.

Q. We had no conversation touching the case then?

A. Only this; you said I may be mistaken.

Q. Did I say that to you?

A. Yes, sir.

Q. Do you remember that you came into my yard on Sunday evening, when my wife, children and I were sitting on the front porch?

A. Yes, sir.

Q. You walked onto the rear porch, and you told me to come around the house; as you passed by didn't you say "I want to see you?"

A. Wasn't I standing in the gate?

Q. Did you say that?

A. No, sir.

142 Q. Didn't you say there you had come to talk to me about the Mattox case, and I said, "I do not want to talk to you about it, because I am the attorney on the other side, and all that anybody will ask of you is to tell the truth."

A. You didn't say that.

Q. Who was with you?

A. Bill Rose; he stopped at the gate.

Q. Didn't he go around with you?

A. No, sir; he wasn't standing where you and I was.

Q. Didn't he go around the house?

A. No, sir.

Q. Do you say, Tom, that I ever talked to you about this case?

A. Not until that Sunday.

Q. Did I ever, since?

A. No, sir.

Q. Did I talk with you about this case there?

A. Excusing that day, you never did.

Q. I ask you whether I talked with you about that case at all at that time?

A. You told me I may be mistaken in the man, didn't you?

Q. No, sir; I didn't.

By the COURT (to Mr. Johnson). You are not on trial?

Mr. JOHNSON. I think I am, as his attorney.

Q. Did you come to my front gate?

A. Yes, sir.

Q. You came into the yard; did you call me to the gate?

A. I told you I went into the yard through the gate, didn't I?

Q. I will ask you if it is not true that you came and opened the
143 gate and walked in around to the back porch, and as you passed the front porch said to me, "Mr. Johnson, I want to see you?"

A. No, sir.

Q. Didn't you say to me, "I have been to see Mrs. Hatch and she sent me to you;" didn't you.

A. Yes, sir.

Q. Didn't I say, "I am attorney for Mattox; you are a witness against him, and all I want you to do is to tell the truth?"

A. You said that, too.

That is all.

Mr. ADY. Said also, you may be mistaken?

A. Yes, sir.

Mr. JOHNSON (to Mr. Ady). I say to you that I didn't say it.

WILLIAM HOUSELL, a witness on behalf of the defense, being first duly sworn, testifies as follows:

Direct examination by Mr. JOHNSON:

Q. Mr. Housell, where did you reside in the month of December, 1889?

A. In Oklahoma City.

Q. Do you remember the occasion or the night on which one John Mullin was killed; you remember the fact?

A. Yes, sir.

Q. Do you know one Thomas Whitman, who has testified in this case?

A. A colored man?

Q. Yes.

A. Yes, sir.

144 Q. Did you know him at that time?

A. Yes, sir.

Q. What business were you engaged in in Oklahoma City at that time?

A. In the drug business.

Q. With whom?

A. With my father.

Q. What is his name?

A. J. M. Housell. At the corner of Reno and Broadway.

Q. Where is Reno avenue situated, with reference to your store?

A. One street south.

Q. Did you or not, on the night of the killing, see Thomas Whitman?

A. Yes, sir.

Q. Where?

A. In the drug store.

Q. I will ask you, Mr. Housell, whether you heard the shots that were supposed to have been the ones that killed Mullin?

A. I heard some shots.

Q. I will ask you whether or not Thomas Whitman came into your store on that night, inquiring for a physician?

A. He did.

Q. And stated to you that John Mullin had been shot?

Mr. ADY. I object to that as immaterial.

(Objection overruled.)

Mr. ADY. The object, I know, is to make it appear that Thomas Whitman admitted the statement that he——

Mr. JOHNSON. We deny the truth of that.

145 Mr. ADY. Deny the truth of the admission, but admit that he made the statement to Housell.

By the COURT. Strike out the question.

(Defendant excepts.)

Q. Were you present at the preliminary examination of Clyde Mattox in Oklahoma City?

A. Yes, sir.

Q. Did you there hear Thomas Whitman testify?

A. Yes, sir.

Q. I will ask you whether or not on that occasion I propounded to him this question: "Did you or not, on the night of the shooting of John Mullin, and very shortly thereafter in the drug store of Mr. Housell, at the corner of Broadway and Reno avenue, state in his presence and that of his son, Mr. Housell, that 'I don't know who shot John Mullin,'" and then and there denied it and said that he made no such statement?

Mr. ADY. I object as incompetent, immaterial, irrelevant, and hearsay.

By the COURT. Now, the question is whether upon the preliminary examination he denied that he made the statement to Housell. You may answer the question.

A. Yes, sir.

That is all.

Mr. JOHNSON. Wait a moment. Did you see Clyde Mattox—did you know Clyde Mattox at that time?

A. I knew him; yes.

Q. Did you see him on that night?

A. I could not positively say in regard to that.

Q. I will ask you, Mr. Housell, whether or not you specifically
146 remember hearing those shots in South Oklahoma of which you spoke?

A. Yes, sir.

Q. I will ask you whether or not it is true that Clyde Mattox at that time or within a period of three minutes prior to the time was in your drug store and there obtained cigars?

Mr. ADY. I object as leading and forcible upon the witness. It states the whole business.

By the COURT. He may answer the question; the objection is overruled.

Q. The question is whether or not he didn't buy a quarter's worth of cigars?

A. He might have; I could not say positive.

Q. I will ask according to your best recollection as to whether he was there at that time?

A. I know that he bought cigars there frequently, but as to that night, positively I could not say.

Q. I ask you according to your best remembrance?

By the COURT. If you remember, state it.

A. I have answered the best I know how.
That is all.

J. M. HOUSELL, a witness on behalf of the defense, being first duly sworn, testifies as follows:

Direct examination by Mr. JOHNSON:

Q. Are your initials J. M.?
A. J. M.
Q. Where do you reside, Mr. Housell?
A. In Oklahoma City.
Q. Where did you reside in the month of December, 1889?
147 A. I was temporarily in Oklahoma City.
Q. What business were you engaged in at that time?
A. I had a drug store.
Q. At what point in the city?
A. In the corner of Reno and Broadway.
Q. You remember the circumstance of John Mullin being killed?
A. Yes, sir.
Q. I will ask you whether or not you were present as a witness at the preliminary examination of Clyde Mattox and heard Thomas Whitman testify?
A. I was not.
Q. You were not present when he testified there?
A. No, sir.
Q. I will ask you whether or not you remember seeing Clyde Mattox on the night of the shooting?
A. I do not remember; it was a year or more before I knew that I should be called upon as a witness, and things passed out of my mind that I might have remembered.
Q. You have no remembrance as to whether or not you saw him on that night?
A. No, sir.
No cross-examination.

FRANK WOLFE, a witness on behalf of the defense, being first duly sworn, testifies as follows:

Direct examination by Mr. JOHNSON:

Q. Where do you reside, Mr. Wolf?
A. I reside in Oklahoma City.
Q. Where did you reside in the month of December, 1889?
148 A. At the same place.
Q. In what part of the city did you reside?
A. I resided in South Oklahoma City, on Choctaw and Reno.
Q. Were you acquainted with John Mullin in his lifetime?
A. Yes, sir.
Q. Tell the jury how far, or at what point with reference to his place of residence you lived.
A. About a hundred feet between my house and his house.
Q. On which side of the street did you live?
A. On the west side.

Q. On which side of Choctaw?
A. On the west side—of Choctaw on the south side.
Q. Same with him?
A. Yes, sir.
Q. What direction was his house from yours?
A. East.
Q. About a hundred feet?
A. About a hundred feet; yes.
Q. Are you acquainted with Thomas Whitman, who has been a witness here?
A. Yes, sir.
Q. Were you acquainted with him at that that time?
A. Yes, sir.
Q. Where did he live with reference to Mullin's place out there?
A. One hundred ten feet from my place.
Q. With reference to the lot on which Mullin was living, where did he live?
A. He lived east about ten or fifteen feet.
149 Q. On the next lot east?
A. Yes, sir.
Q. Do you remember the circumstance of the shooting of John Mullin?
A. Yes, sir; I do.
Q. State whether or not you saw Thomas Whitman on that night and after the shooting.
A. I saw him after the shooting?
Q. How long after the shooting, do you think?
A. I think it was about twenty minutes.
Q. Where did you see him?
A. I saw him go from his house; he had a club or rifle, I don't know what it was. He went from the street to the ice factory northeast.
Q. The ice factory? Where is that?
A. East of my place, across the railway.
Q. Go ahead.
A. He went over the street; I heard him talking to Mr. Hopkins; I seen him go over the street and he spoke and I heard his voice, and he——
Mr. ADY. I object to his stating what Thomas Whitman said.
By the COURT to the witness. Not the conversation.
Q. State how soon it was, if at all, after that you saw him and had a conversation yourself with him.
A. I had a conversation with him about a half an hour or may be a little longer after the shooting was done.
Q. Do you know whether or not it was before he had gone up town?
A. After he had come from town.
150 Q. State whether or not in that conversation you had with him you asked him who did the shooting, and whether *you* told you, said to you in that conversation that he didn't know who did it?
A. Yes, he said he told Hopkins so right there on the street and Hopkins had some talk about a marshal and about a doctor, and Hotchkins asked him who done it, and he said, "I don't know; it was a man from town." He meant north of town.

Q. Where were you at the time of this shooting, Mr. Wolfe?
A. I was about twenty or twenty-five feet—down in Logan's lot south from the street.
Q. The Logan of whom you speak, where was his lot with reference to your lot?
A. It was about eighty or seventy-five feet.
Q. What direction from you?
A. East.
Q. You were down on Logan's lot at the time of the shooting?
A. Yes, sir.
Q. How far were you from Mullin's place?
A. Well, about twenty or twenty-five feet.
Q. What direction?
A. West.
Q. Where were you standing?
A. Right on the line by the fence.
Q. The street line?
A. Yes, sir.
Q. The fence in front?
A. Yes, sir.
Q. I will ask you whether or not you saw this shooting?
151 A. I saw the shooting; yes.
Q. Tell the jury what you saw.
A. Well, I saw two men going down to this place where this Mullin lived walking right on the east side; I was right by the fence, two fellows were walking by the middle of the street, and one says when I strike the house I will show you. I come through my lots and through lots down to Logan's lots and listened. Where I stand I am not sure about it if I was close to the door or inside, but I seen the light coming from the door, and some moments went on and this man fired two shots to the door and the other man fired shots, and the man who fired the first shot said, "Here, let's go this way!" I am coming to the street; moved down to where my wife was, calling me "Frank, Frank, come back here!" I said, "You must be afraid about me." She said, "You just come back here; I am afraid you will be killed." I just met my wife by Whitman's lots. She said "you had better stay to me." She asked me who did the shooting. I said, "I don't know; it was two white men shot John this colored man." During this time my wife run in the house and tried to get me in the house, but I didn't go. I saw a man about thirty or forty feet west from my house. There was a lot; they was on one side of the lot and I was on the other side of the lot; I didn't know who it was, but afterwards I found——
By the COURT: Never mind.
Q. You say you saw a man and a woman thirty or forty feet west?
A. Yes, sir.
Q. Mr. Wolfe, at the time this shooting occurred could you see the parties who did the shooting?
152 A. I can see the form of men; I could not see who it was.
Q. You were about twenty-five feet away?
A. Yes, sir.
Q. Were they or *night* standing in the light of the door?

A. They was standing about on the side like, on the edge of the sidewalk.

Q. Did you know who these men were?

A. I have got no idea.

Q. Do you know now?

A. I do not know.

Q. I will ask you whether or not at that time or before that time you knew Clyde Mattox?

A. Yes, I knowed him very well.

Q. I will ask you whether either of those men which you say did that shooting was Clyde Mattox?

A. No, sir; I could not tell who it was.

Q. What is your judgment as to whether it was or not.

By the COURT:

You need not answer the question.

Q. I will ask you whether or not either one of those men was Clyde Mattox?

Answer. I don't think so.

Mr. ADY: I move to strike that opinion out.

By the COURT: Do you know who they were?

A. I do not know who it was.

Q. How long had you known Clyde before that?

Mr. ADY: I move to strike out that answer.

COURT. Answer is stricken out.

Q. How long had you known Clyde?

A. About for a year or may be some longer or less.

Q. How well had you known him?

A. I met him pretty near every day on the street, or round the depot or so.

153 Q. I will ask you whether or not at the time or before that time you were acquainted with Clyde's voice to any extent?

A. Yes, I was; I am talking to him that day, about six or seven times.

Q. That same day?

A. Yes, sir.

Q. What was the occasion of your talking to him?

A. He was guarding an old Frenchman about stealing some goods; it was close to where I lived and I went and talked to him.

By the COURT. Don't give the conversation.

Q. Did you or not hear the voices of these men on that night at the shooting, the two men who did it?

A. I did?

Q. I will ask you whether or not the voice of either one of them was the voice of Clyde Mattox?

A. No, sir.

Q. What was the difference, if any, between?

A. It was a heavier voice.

Q. Both of the men had heavier voices?

A. Yes, sir.

Q. What, if anything, was in front of this Mullin's house?

A. There was nothing in front.
Q. Was there a little fence?
A. The house was right by the street.
Q. I will ask you whether or not there was a fence in front?
A. I can not recollect.
Q. How far did these men who did the shooting stand from the front part of the house or the door?
A. Between fifteen and twenty feet.
154 Q. Back from the door?
A. Yes, north from the door.
Q. And you didn't see John at the time he was shot—John Mullin?
A. I can see him, but not all. I can see him a little.
Q. Why could you not see all of him?
A. I was on the street, he was in the same line. I can see his form, but not all.
Q. Was he on the street?
A. Yes, he was, but I was on the same line; he stepped in the door, and I didn't watch him.
Q. Who else, if anybody, did you see there at the time of the shooting?
A. I didn't see anybody on the street except these two men.
Q. What other persons, if any, did you see standing about or near Mullin's door at the time of this shooting?
A. I could not see the door. I didn't see anybody there.
Q. Who was standing about there or near there on the outside?
A. I didn't see anybody there.
Q. Were you or not looking directly towards the door of Mullin's at the time of the shooting?
A. I was looking more on these two men than on Mullin.
Q. Did you see anybody near the door at the time?
A. No, sir.

Cross-examination of Frank Wolfe by Mr. ADY:

Q. When you saw these two men they were fifteen or twenty feet away from the door?
A. Yes, sir.
155 Q. You didn't see them closer to the door?
A. No.
Q. Did you say there wasn't anybody standing in front except these two men?
A. I didn't see anybody.
Q. Can you answer any question? Are you sure there wasn't anybody there?
A. I am sure.
Q. How far was you away?
A. About twenty or twenty-five feet.
Q. Standing in the door?
A. In Logan's lot.
Q. Is Logan's lot just fifteen or twenty-five feet away from there?
A. Logan's house was about five or eight feet from this man's house, or ten.
Q. Which way?
A. West.

Q. You say you heard Tom Whitman say to Elisha Hopkins—is that the one, Elisha Hopkins?

A. No, I heard him talking to Hotchkins.

Q. Was it Elisha Hopkins, a colored preacher?

Mr. ADY (turning around). Is Elisha here? Stand up there.

Q. You say you heard him tell that man (pointing to Hopkins) that he didn't know who did the shooting?

A. Yes, sir.

Q. What is your business, Mr. Wolfe?

A. Real estate business.

Q. What else?

A. Coopersmith.

Q. Do you work any at that trade?

A. Not much.

156 Q. What do you do?

A. I have property and gardening.

Q. You are in the real estate business?

A. Yes, sir.

Q. What do you mean, jumping claims?

A. No, sir.

Q. Have you ever been convicted of perjury?

A. No, sir.

Q. How many cases are pending down there towards you now?

A. None at all.

Q. Do you say there are no cases pending against you for perjury? How many times have you been arrested for that?

A. Three times.

Redirect examination of Frank Wolfe by Mr. JOHNSON:

Q. What was the result of that?

A. I was arrested for telling the truth.

Q. What offense were you arrested for charged with perjury?

A. I saw some parties before the country opened in Oklahoma; I sent up for the officers.

Q. They had you arrested for perjury?

A. Yes.

Q. And you were discharged?

A. I was discharged.

That is all.

Recross-examination of Frank Wolfe by Mr. ADY:

Q. Don't you know there are three cases from which you have been discharged?

A. I am discharged.

157 Q. They are before the grand jury, are they not?

A. No, sir.

FRANK WOLFE recalled by Mr. JOHNSON:

Q. Mr. Wolfe, what Logan is it of whom you spoke this morning as having been on his lot? What is the name of the man Logan you spoke of having been on his lot?

A. I don't know his first name, but he lives somewhere in the Black Jacks.
Q. Is he a white or colored man?
A. Colored.
Q. Do you know J. L. Logan?
A. Yes, sir.
Q. Is it or not the same Logan?
A. No.
That is all.

J. L. LOGAN, a witness on behalf of the defense, being first duly sworn, testifies as follows:

Direct examination by Mr. JOHNSON:

Q. Where do you reside, Mr. Logan?
A. In Oklahoma city.
Q. Where did you reside in the month of December, 1889?
A. In Oklahoma city.
Q. State in what part of the city you reside, specifically.
A. In the south part of the town, on the corner of Choctaw and Robinson streets.
Q. Do you know where John Mullin resided during his life or at the time of his death?
A. Yes, sir.
158 Q. How far were you from John Mullin's residence?
A. About a block and a half west of his residence.
Q. What street was there between his place and yours?
A. Broadway.
Q. You lived, did you, one block west from him on the corner of Robinson and Choctaw?
A. I lived on the west corner of Robinson; right west of Broadway.
Q. Do you remember the night of the killing of John Mullin; do you remember the fact?
A. Yes, sir.
Q. Where were you on that night?
A. At my house.
Q. State whether or not you heard the shots.
A. I heard one shot.
Q. Where were you at the time you heard this shot, or these shots?
A. Inside of the house.
Q. What house?
A. My dwelling.
Q. Who else was there, if anybody?
A. My wife and baby.
Q. Anyone else?
A. Mr. Hopkins had been there, but he had just stepped out of doors.
Q. What Hopkins?
A. Elisha Hopkins.
Q. The same gentleman who has been a witness on this stand?
A. I suppose so; Elisha Hopkins, a preacher.
159 Q. Do you know where he was at the time these shots were fired?

A. I don't know just exactly where he was; he could not have been more than twelve or fifteen feet from the door.

Q. State when you next saw him after the firing of those shots.

A. At my door.

Q. How soon after?

A. Immediately after the shot was fired.

Q. State whether or not you saw any parties going west on Choctaw street.

A. About five minutes after the shot was fired I saw two men running up the street.

Q. Where was Hopkins at that time?

A. Standing at the door.

Q. What door?

A. My door.

Q. Could you see these men?

A. Yes; saw the shape of them.

Q. How far, in your judgment, did they pass from the house out in the street?

A. About thirty feet.

Q. You spoke of seeing the shape; was that all you could see?

A. That is all I could tell.

Q. Could you at that distance, with the light you had there, the light of the lamp on the table, tell in any manner who they were?

A. No, sir; I could not.

Q. How did they appear as to size?

A. They both seemed to be pretty near the same size.

160 Q. What was their size?

A. They looked to be larger than I am.

Q. State whether or not you observed them closely as they passed by.

A. As close as I could in the dark.

Q. Who was with you at that time?

A. Mr. Hopkins.

That is all.

Cross-examination of J. L. Logan by Mr. ADY:

Q. You was in the house when the shots were fired?

A. Standing in the door; when the shots were fired I was in the house.

Q. Mr. Hopkins had gone out?

A. Just stepped out of the door.

Q. He had gone out of the house?

A. Yes, sir.

Q. You didn't see him just the minute the shots were fired?

A. No, sir.

That is all.

JOHN MCKEE, a witness for the defense, being first duly sworn, testifies as follows:

Direct examination by Mr. Johnson:

Q. Where do you reside, Mr. McKee?

A. In Oklahoma City.

Q. Where did you reside in the month of December, 1889?

A. In Oklahoma City.

Q. Do you remember the circumstance of a colored man by the
161 name of John Mullin being killed there sometime in the month of December?

A. I recollect there was a man killed there by that name; they told me.

Q. Do you remember the night on which it occurred? Do you remember the fact?

A. I remember the night they said he was killed.

Q. State whether or not you heard any shots on that night.

A. Yes; I did.

Q. How many?

A. I think it was three.

Q. At about what time did you hear them?

A. About near ten o'clock.

Q. Where were you, Mr. McKee, when these shots were fired?

A. At the corner of Reno and Broadway.

Q. Near what business house or place?

A. In front or close to the drug store.

Q. Whose drug store?

A. I think Housell is the man that keeps it.

Q. Where did you reside at that time?

A. On California avenue.

Q. How far from this point?

A. My house where I lived was No. 8, that is four doors from the corner of Sante Fe. st. Sante Fe is east from Broadway; the first from the railroad.

Q. In going to your home from this corner where Housell's drug store was, how would you go?

A. I went in from the back way, across lots. The drug store is on the northwest corner of Reno and Broadway. I had a back cut; I went in across in the back cut into my house.

162 Q. Was your house or not diagonally lengthwise across the block directly east of the one in which Housell's drug store was?

A. Yes, sir.

Q. Where were those shots you heard?

A. I took them to be out towards the direction of the ice factory south.

Q. Is that East Oklahoma?

A. Yes—South Oklahoma.

Q. Who was present with you when you heard those shots, if anybody?

A. There was no one present; me and a man by the name of Williams went over to a place on the south side of Reno avenue. He was living in Guthrie; I went over to Housell's drug store to get some quinine. Going in I met Dr. East and Mr. Mattox.

Q. What Mattox?

A. The man there. (Points to the defendant.)

Q. How long was it after you saw East and Mattox until you heard these shots?

A. I don't think it was over five minutes.

Q. What had you done in the meantime?

A. I went to the drug store; Mattox said, "Good evening" and took a cigar. Dr. East said to me to take one. Mattox said, "I am going away." We was standing close to the platform; I goes in and gets my

quinine; as I came out of the drug store and stepped about ten feet off to get to Broadway to go home Dr. East made the remark and said, "There is some shooting going on south of town."

163 ADY. Never mind the conversation.

Q. How far had you gone from these two men, East and Mattox, when you heard these shots?

A. I don't think it was over ten or fifteen feet.

Q. Do you know where they were at the time you heard them?

A. They were standing near the corner of Reno and Broadway, close to the drug store; I passed them as I came out.

Q. Anyone else with them at that time?

A. I don't recollect exactly whether there was or not; I can not say there was.

Q. How were those shots fired?

A. I heard one shot and two in quick succession. I think it was, if I remember right, there were three shots.

Cross-examination of John McKee by Mr. ADY:

Q. How long have you lived in the Territory?

A. As long as anybody; I am not a "sooner."

Q. Will you answer the question?

A. Since the 22d of April.

Q. Was you down there a good deal before that?

A. No, sir.

Q. You plead guilty to some offense here, at the last term of court, under the title of "Rattlesnake Jack," wasn't it?

A. They had me arrested for selling whiskey; they said if I would plead guilty they would acquit me. And I did.

Q. That is part of your name, isn't it?

A. No, sir; it is not. They called me that.

Q. You went by that name, didn't you?

A. No, sir.

Mr. JOHNSON. Why did they call you that?

By the COURT. No.

(Defendant excepts.)

164 T. H. EAST, a witness on behalf of the defense, being first duly sworn, testifies as follows:

Direct examination by Mr. JOHNSON:

Q. You answered before noon where you reside. Where did you reside in the month of December, 1889?

A. In Oklahoma city.

Q. What position, if any, were you occupying at that time?

A. United States deputy marshal for this district.

Q. Do you remember the occasion of the killing of John Mullin?

A. Yes, sir.

Q. Where were you on that night?

A. I was in Oklahoma city.

Q. I will ask you, Mr. East, if you heard any shots on that night?

A. I did.

Q. About what time?

A. Well, it was sometime, I think, between nine and ten o'clock, perhaps later.

Q. Where were you at the time you heard them?

A. I was at Housell's drug store.

Q. Where is that?

A. On the corner of Reno st. and Broadway, Oklahoma city.

Q. Will you tell the jury how you heard these shots, and how many, and how they sounded?

A. I was standing in front of the drug store and heard some shooting; I was talking to Clyde Mattox; I remarked to him there was some shooting and wondered what it was.

Q. How many shots did you hear?

A. Three shots south of there; in that direction, southeast.

165 Q. How were these shots fired as to succession, how rapidly?

A. There was a few seconds between each shot, like some one shooting a pistol. Clyde Mattox remarked that he supposed it was some drunken men running out of town. It sounded like some one running and shooting.

Q. What, if any, position was Clyde occupying at that time, Mr. East, with you or under you?

A. Well, I was deputy marshal; he was acting posse at that time.

Q. Did you have business with him on that day and night?

A. Yes, sir; he had a man in charge in that part of town, guarding him.

That is all.

Cross-examination of T. H. East by Mr. ADY:

Q. Who was the man he had under charge?

A. He was—I don't know his name now; he was a Swede.

Q. Lived down there in the Bohemian—they called him a Bohemian?

A. Some foreigner; yes.

Q. Lived on the same street Mrs. Walker did, Laura Walker, where Mullin was killed.

A. I don't know; he lived in South Oklahoma.

Q. Do you know where Mullin was killed?

A. In the south part, or lower part of the town.

Q. Was you ever at the place where he was killed?

A. No, sir; I never was there.

Q. At this time you say you was United States deputy marshal, under Walker, of this district?

A. Yes, sir.

166 Q. While there you had Clyde Mattox under your charge as deputy marshal?

A. Yes, sir.

Q. Charged with the killing of John Mullin, with this offense?

A. Yes, sir.

Q. Was that the first time he returned and gave himself up that you had him under your charge?

A. Yes, sir.

Q. He escaped during that time, didn't he?

A. Yes, sir, he did.

Q. Was he in your personal charge, or some one else's, when he escaped.

A. He was in charge of his bondsmen in the case in which he had been tried.

Q. After that escape a controversy arose between you and——

Mr. JOHNSON. I object.

(Objection overruled. Defendant excepts.)

Q. During that controversy did you inform R. L. Walker or George Walker, his brother, that you had seen Clyde Mattox during the time the shooting took place?

A. I didn't inform George Walker of anything; I was sick at the time when he took my commission away from me. He sent for me; I could not go. I sent for him, and he sent back that he only wanted my commission, that those prisoners had escaped and that was enough; he wanted my commission.

Q. Have you seen him since, frequently?

A. Not frequently.

167 Q. Did you ever talk that over with him?

A. His brother came to investigate.

Q. When Dick Walker came to investigate did you inform him that you were standing with Clyde Mattox?

Mr. JOHNSON. I object.

(Objection overruled. Defendant excepts.)

A. I don't remember the conversation; he asked me questions.

Q. I asked you whether you told Dick Walker that you were standing by Clyde when that shooting was done and that it wasn't him that done it?

A. I have no memory; my commission was taken before Clyde escaped. That is my memory; I can not remember, I might have told him.

Q. Did you ever tell George Walker so?

A. I never had any conversation with him in my life as to that. I——

That is all.

Redirect examination of T. H. East by Mr. JOHNSON:

Q. State whether or not this defendant, Clyde Mattox, after this killing, surrendered to you as the United States marshal on that charge?

A. He did.

Q. Where?

A. In Oklahoma City.

Q. Did you know how long it was after the killing?

A. I can not remember.

Q. Well, about; as near as you can tell.

A. I could not tell you.

168 Q. After his escape you say you were sick.

A. I was sick in bed.

Recross-examination of T. H. East by Mr. ADY:

Q. Now, Dr., after the escape, after this shooting; did you make any search for Clyde Mattox?

A. No, sir; he was with me.

Q. I mean the next day or two or three.

A. No.
Q. Did you see him the next day, or two, or three?
A. No, sir.
Q. Did you know where he was?
A. No, sir.
Q. Did you afterwards go with one Hart and get a team that he had left at Morgan Wright's and take it away?
A. No, sir.
Mr. JOHNSON. We object.
Q. Did you go with one Hart down to the Pottawatomie Nation with a team and exchange with one Morris for a team that had been traded to him?
Mr. JOHNSON. We object. It is not cross-examination nor material.
(Objection overruled. Defendant excepts.)
A. What was the question, exchange a team, is that the question? I went into the Pottawatomie country and got a team.
Q. And you took a team with you, didn't you?
A. Yes, sir.
Q. Do you know where that team came from?
169 A. Yes, sir.
Q. Where did it come from?
A. From the place I left it. The team I took down with me; it came from the place I left it; the Pattawatomie country.
Q. Where did you get it to start down to the Pottawatomie country with?
A. From Hart.
Q. Do you know where he got it?
A. No, sir.
Q. Now, this team that you exchanged it for, what did you do with that?
A. I brought it to Oklahoma city, and put it into the livery stable.
Q. Whose was it?
Mr. JOHNSON. I object as immaterial, and not the cross-examination.
(Objection overruled. Defendant excepts.)
Q. Whom did it belong to?
A. I have forgotten the man's name; his home is in Guthrie.
Q. Do you know from any statement of Clyde Mattox how that team came down there?
A. No, sir.
Q. Do you know from any statement or from Clyde Mattox's words of any place he left the horses that you say you got from Hart and took down there?
A. He never told me he had any horses; all the information I got of the horses was from Hart.
Q. What was the color of those two you took down into the Pottawatomie country?
170 A. I have forgotten; I believe one was a sorrel.
Q. And the other a bay?
A. I don't remember; may have been a bay, I don't remember.
Q. Ponies?
A. Yes, sir.
Q. You delivered them to Morris, did you?
A. Yes; I left them at his house; I didn't deliver them.

Mrs. H. HATCH, a witness on behalf of the defense, being first duly sworn, testifies as follows:

Direct examination by Mr. JOHNSON:

Q. What are your initials?
A. H.
Q. What relation are you to the defendant?
A. I am his mother.
Q. Do you know Tom Whitman?
A. Yes, sir.
Q. The witness who has testified here?
A. Yes, sir.
Q. Tell the jury what and all, if you please, if anything, he has said to you since your son has been here charged with this crime touching what he knew about it, what he has asked you to do, etc.

By the COURT. You may ask her the same question that you asked Thomas Whitman. Ask her to state whether the facts stated by him—you may ask the same question. I do not care about going into a long rambling conversation; it will take all the afternoon.

Q. Where did you reside during the months of June, July, and August?
171 A. On Main st.
Q. Where?
A. In Oklahoma City.
Q. State whether or not on Saturday evening in the month of June last Thomas Whitman came to you and asked you to let him have some money to get something to eat for Sunday, and said he had been working for railroad men, and they had not paid him, and whether or not at that time you gave him a five-dollar bill and told him to get you some coffee, and upon his return you loaned him a dollar?
A. I did.
Q. State whether or not on Sunday, about two weeks subsequent to that time he came to you at the same place and told you that he wanted to talk with you, and upon being invited into the house, you asked him what he wanted, and he said "I have come to say this, that I am never going to say it again that it was Clyde that done that shooting?"
A. Yes, he said that.
Q. Wait a moment "I may be mistaken, and the night was so dark." Upon which you said, "Tom, are you going to say that?" Upon which he replied, "All you have to do is to try me."
A. Yes, sir.
Q. Whereupon he asked you to let him have twenty dollars to send his wife to Birmingham, Alabama?
Mr. ADY. I object.
(Overruled.)
A. Yes; he asked me that.
Q. Mrs. Hatch state whether or not in the month of July or August last Tom came to you at your home and said to you that he had a telegram
172 from Soper, assistant U. S. Attorney in this district, asking him to come to Topeka, and asked you for five dollars to go on?
A. He did; he said he had received it on Saturday night.
By the COURT (to witness). Wait.

Q. I will ask you whether or not in the month of July or August last, or at any other time, at your home or any other place, in the presence of Wells or Love or both of them, or anyone else, you ever said to Tom that if he would help you you would give him fifty dollars and a good claim?

A. No, sir; I didn't have any claim; I never said it. He asked me to let him have thirty-five dollars; lend it—

Q. Wait, Mrs. Hatch. Mrs. Hatch, have you ever at any time or place or in any way offered Tom Whitman money or any consideration if he would testify in this case as you wanted him to?

A. No, sir.

Q. Wait a moment.

Mr. ADY. It is answered.

Q. Mrs. Hatch, do you remember the occasion on which Mullin was killed, John?

A. Yes, sir.

Q. Where did you reside at that time?

A. I lived on Reno, on Reno st. down there.

Q. In Oklahoma City?

A. Yes, sir.

Q. When did you first hear that John was shot?

A. As well as I remember Thornton came to my door about eleven o'clock at night, rapped on the door; I got up and went to the door
173 and asked who it was. He said it was Thornton. I just barely opened the door a little bit. He asked me if Clyde was in. I told him "No." He asked me where Clyde was. I told him I didn't know; that Clyde told me that evening that he was going on some business for Dr. East. He said you tell Clyde when he comes that I want him to come to my office; I want to see him. He left at that.

Q. My question was when you first heard of the shooting of John Mullin?

Mr. ADY. She has told.

By the COURT. Answer the question.

A. It was about an hour after that. Mr. Housell, in the drug store, came and told me that this man was killed.

Q. Did you know John Mullin in his lifetime?

A. I did not.

Q. Did you see him at any time, after he was wounded, before his death?

A. Yes; the next morning between nine and ten o'clock, I think.

Q. Where did you see him?

A. At Mrs. Walker's.

Q. Where he was shot; where he died?

A. Yes, sir; where he died.

Q. What was the occasion of your going to see him?

By the COURT. Is that material?

Mr. JOHNSON. I think it is. I want to show a statement that he made to her. She says she was a stranger; I want to show how she happened to go there.

By the COURT. She may answer the question.

Q. Will you tell briefly the way you happened to go there?

174 A. I heard that Clyde was accused of the killing; the next morning I went down there to see him—the next morning, in com-

pany with Dr. Graham. We went into the house and the Dr. went back to the cot where Mullin was lying, said a few words to him and then came to me and said——

Q. Wait a moment.

A. I asked the Dr. if I might go and speak to him, and he said "Yes." I went and asked Mullin——

Mr. ADY. I object to any conversation between her and Mullin.

Q. Do you know, Mrs. Hatch, how long it was after that time before he died?

A. He died about one o'clock, I think.

Q. Could you from your observation and knowledge judge of what condition he was in?

A. I thought he was dying. I asked Dr. Graham, and he said he was.

Q. Do you know from anything that John said at that time what he thought of his condition?

A. I do not.

Q. Did you or not at that time—you say Dr. Graham was a practicing physician?

A. Yes, sir.

Q. Do you know whether or not he had charge of the case or not?

A. Yes; he gave him some medicine while I was there in the house, "to ease him," he said.

Q. Do you know from anything that was—did you or not hear any statement made by the Dr. at that time to John as to his condition, or what the result was liable to be or would be?

175 By the COURT. Wait, wait. Mr. Johnson, right along there you strike a sand-bar that I am afraid you cannot get over.

Mr. JOHNSON. I will have to bring the Dr.

That is all.

Mrs. JOSIE GEFFS, a witness on behalf of the defense, being first duly sworn, testifies as follows:

Direct examination by Mr. JOHNSON:

Q. Is your name Mrs. Josie Geffs?

A. Yes, sir.

Q. Where do you reside?

A. In Oklahoma City.

Q. Where did you reside during the month of August, Mrs. Geffs?

A. In Oklahoma City.

Q. Were you acquainted with Mrs. Hatch at that time?

A. Yes, sir.

Q. With Tom Whitman, the witness, who has been testifying here?

A. Yes, sir.

Q. I will ask you whether or not on Monday, the 24th day of August, on Main st., Oklahoma City, Tom Whitman came to Mrs. Hatch in your presence and said to her that he had received a telegram from Soper, the prosecuting attorney, that he wanted him to meet him at Wichita on Wednesday, and asked her for five dollars to go to Wichita, and whether Mrs. Hatch at that time said, "Tom, do you expect that I am going to give you money to go to Wichita to swear my boy's life away?" and to which he answered, "You need not be afraid; I am never going to say

again that it was Clyde, for the night was so dark," when Mrs. Hatch said to him, "I have no money for you?"

176 A. Yes; he did.

Q. Did that conversation take place?

A. Yes, sir; it did.

Q. Will you tell us what point on Main st. it was?

A. It was on Main st.

Q. Do you remember the time of day?

A. It was in the morning.

Q. How is it you can be so specific as to the language used?

Mr. ADY. If the court please, I don't think it is right for the counsel to cross-examine the witness.

That is all.

Dr. SAMUEL GRAHAM, a witness on behalf of the defense, being first duly sworn, testifies as follows:

Direct examination by Mr. JOHNSON:

Q. What are your initials?

A. Samuel.

Q. Where do you live, Dr.?

A. In Oklahoma City.

Q. What is your profession?

A. Physician.

Q. Where did you reside during the month of December, 1889?

A. In Oklahoma City.

Q. Did you know John Mullin in his lifetime, a colored man?

A. Well, yes; I had met him.

Q. I will ask you whether or not you remember the circumstance of his being shot, of his death and before he was dead, and of his death?

A. Yes, sir.

Q. Dr., at what time in the night did you first learn of his being wounded or shot?

177 A. I think a little after nine o'clock.

Q. How did you learn it, Dr.?

A I just had gone to bed.

Q. How did you learn it?

A. I learned it from Mr. ———, a colored gentleman, coming for me to go down there.

Q. Do you know who the colored man was?

A. I don't remember his name; he was a yellow-colored man.

Q. You visited him on that night?

A. Yes, sir.

Q. Did you visit him at any other time?

A. Yes, sir.

Q. When did you next visit him?

A. The next morning. I stayed with him that night until about one o'clock; probably a little after.

Q. What time the next morning did you visit him?

A. Between eight and nine o'clock.

Q. Who, if anybody, was there besides yourself while you were at the house?

A. There was a number first when I went there; some colored people and some of them was white; who it was I could not say.

Q. Are you acquainted with Mrs. Hatch, the mother of Clyde Mattox, this lady?

A. Slightly acquainted.

Q. I will ask you whether or not she was there on that morning?

A. Yes; she went down with me.

Q. From what point in the street?

178 A. Well, I think had been down there. I met him; he and I were talking. I think it was probably a block from Reno; she came up and was going down and she did go down with me.

Q. Tell the jury what condition you found him in at that time, if you please.

A. The next morning?

Q. Yes, sir.

A. He was about in the same condition as the evening before, in regards to the pulse and looks of the man; that is all I have to go by.

Q. What did you regard his physical condition at that time, or the chances of his recovery?

A. I regarded his chances—that all the chances was against him.

Q. State, if you please, Dr., whether or not on that morning and while there you had any conversation with him touching his condition or made any statement to him as to his condition, or the probability of his recovery?

A. Yes, sir; I did on that evening; I had on that evening.

Q. You mean the night before?

A. Yes, sir.

Q. I am asking particularly as to this morning.

A. Yes, I had.

Q. Will you tell the jury, if you please, what you said to him?

A. As near as I can remember, Tom, I always called him, but I found out since his name was John; I never was acquainted with him but a little; he sawed some wood for me——

By the COURT. Never mind that.

179 A. He asked my opinion; I told him. I said, "The chances are all against you; I don't think there is any show for you at all."

Q. Do you know what time he died?

A. I think he died about one or two o'clock the second day.

A. This same day you speak of?

A. Yes, sir; the same day I went out to see him.

Q. Were you present at the time of his death?

A. I think I was; yes, sir.

Q. Dr., did he or not make any statement to you or in your presence on that day and after you had told him as to his physical condition as to who it was or what his knowledge was as to who shot him?

A. Yes, sir; he said he didn't have any knowledge of who shot him. I interrogated him about three times in regard to that—who did the shooting—and he didn't know.

Q. I will ask you, doctor, whether or not you heard him after the time I speak of, and you told him as to his physical condition, make any statement to Mrs. Hatch as to who it was shot him, or as to what knowledge he had as to who shot him?

Q. With reference to John's house, or where he was, where were you at the time of the shooting?

A. I was a little west of the house on the street, going home.

Q. What street?

A. I don't know the name of the street.

Q. Was it or not on the same street that he was killed on?

A. Yes, sir.

Q. On which side of the street?

A. South side of the street.

Q. Who, if anybody, was with you?

A. Miss Rowley.

Q. Josie Rowley?

A. Yes, sir.

Q. How far in your judgment were you from John's house, or where he was at the time of this shooting?

A. I could not just exactly tell the distance.

Q. Give your best judgment.

A. I think there was about one or two houses between us.

Q. That is, there was one or two houses between where you stood and the house where John was killed, or do you mean to say houses between you and John?

184 A. I know we stood off; I was out in the street.

Q. State to the jury what you saw and what you heard.

A. I was on my way home; in the transfer business in Oklahoma city; I had put up my team, and was on my way home; I had got out south a half a mile and turned east; I stopped at this lady's house a few minutes; while I was sitting in there I heard a racket; she said she guessed that it was her sister-in-law up the street——

Mr. ADY. I object.

A. We heard a racket; she——

JUROR (interrupting). Who is this woman?

A. Miss Rowley. We come up the street east, towards the Sante Fe R. R.; we saw two men; I said, "There is the racket"——

Mr. ADY. Don't state what you said to her.

A. I seen these two men standing, facing south; it frightened me some, and I stopped, but I still ventured a little farther ahead: I stepped twenty feet farther east, then I stopped, and I saw a man standing in a house with the door facing to the north; he was standing in the house, with his left hand up on the door; I saw his hand and the two men facing south; I stood there a few minutes, and heard them swearing; I then heard one man saw "Hold up your hands," and then he shot; three shots; two pistols fired; one man two shots, and the other man one shot.

Q. Could you see these men at that time?

A. Yes, sir.

Q. What was their appearance as to dress, size, height, etc.?

A. I thought they was dressed in black: I could not just tell exactly; I thought they was.

185 Q. What about their size?

A. Medium-sized men.

Q. Did you hear either of them say anything?

A. Yes, sir.

Q. What was the character of their voices?

A. Their voices seemed middling, tolerably coarse voices.

Q. What became of these men immediately after the shooting?

A. They went west; just before they got to me I heard one say to the other, "We got him, didn't we?" He said this: "We killed the black son of a bitch." He says, "We will not hurry to go uptown; they won't suppose we done it."

Q. You could see these men as they stood out in front of that house?

A. Yes, sir.

Q. Could you see their faces?

A. No, sir.

Q. Why not?

A. Because they didn't have their faces towards me; they was facing south.

Q. When they came west what kind of hats did they have?

A. I think they had black hats.

Q. Slouch hats?

A. No, sir; nice hats.

Q. When they came west did they or not pass near you?

A. Yes, sir.

Q. How close to you?

A. I was on one side of the road, they was on the other.

Q. Were you acquainted with Clyde Mattox at that time?

A. I had got acquainted with him that summer.

Q. How well had you known him?

186 A. Just known him when I saw him. I was not personally acquainted with him at all.

Q. I will ask you whether or not one of those men was Clyde Mattox?

A. I could not say whether it was or not; I could not see their faces; they had their hats pulled over their faces.

Q. You could not see their faces to recognize them; how close did they come to you?

A. They was on one side of the road; I was on the other. You know how close he must walk.

Q. How many feet?

A. There was a road between us; I was on one side and they was on the other.

Q. Think two or three feet?

A. I would; yes.

Q. I will ask you as to the size of these men; what about their size?

A. I could not tell exactly; I thought they was medium-sized men. I was somewhat scared over the shot, but I looked at the men as they passed and I thought it was pretty well for me to go on about my business. I saw the men, but I passed on as fast as I could.

Q. You saw them down there in the lamp-light as they stood in front of the door?

A. No, sir; I saw the man standing there.

Q. You was standing at a point west of this house?

A. Yes, sir; at the corner.

Q. Who else, if anybody, did you see in front of that house at the time of the shooting?

187 A. No one else but these two men and the man that was shot.
Q. How far were these two men from the door?
A. Not more than a couple of feet from the door.
Q. Close to the door?
A. Yes, sir.
That is all.

JOSIE ROWLEY, a witness on behalf of the defense, being first duly sworn, testifies as follows:

Direct examination by Mr. JOHNSON:

Q. Is your name Josie Rowley?
A. Yes, sir.
Q. Where did you live in the month of December, 1889?
A. I was stopping at South Oklahoma City.
Q. Do you remember the occasion of the shooting of John Mullin?
A. Yes, sir.
Q. Where were you on the night of the shooting of John Mullin?
A. I was home.
Q. Where did you live?
A. On Choctaw and Broadway, in South Oklahoma City.
Q. How far did you live from John Mullin; about how far?
A. About one block; I lived in the next block from John Mullin's home.
Q. How far did you live from Broadway?
A. I lived the first house in the second block; there was two lots on Broadway; I lived in the second lot from Broadway.
Q. Do you know the width of these lots?
188 A. Twenty-five feet front.
Q. Did you see the shooting?
A. I did.
Q. Where were you at the time the shooting occurred?
A. I was standing on the east end of Wolfe's lot, near the fence.
Q. In the east edge of Frank Wolfe's lot?
A. Yes, sir.
Q. Have you an idea how far, in feet, you were from the place where the shooting occurred?
A. I was about 100 feet; there was four lots between us and the shooting, and the lots were twenty-five feet front.
Q. Tell the jury what you saw and heard on the night that the colored man was shot.
A. I was at home; I heard voice of a woman screaming. I thought I recognized the voice to be that of my sister-in-law. I thought I recognized the voice; I listened and heard the second time. Tom Thompson was in our house; he started home. I went down as far as he did; as far as Wolfe's. I found out it was not my sister-in-law. I heard the voice of John Mullin and he said, "What are you doing down in this part of town?" He says, "I am down here ——" "If you want women, go into your own part of town." "I am down here to protect my women." He says, "Now, you git yourselves, you sons of bitches!" I heard three reports of pistols. I was standing on the east corner of

Wolfe's lot; there was a bright light streaming out of Wolfe's window. That is the reason why I wasn't caring to go in there; I wasn't caring to get to a light and be seen.

189 By the COURT. Never mind.

A. As I was standing two men run by; they were large men and carried weapons; they had pistols in their hands.

Q. I will ask you whether or not at the time of this shooting you saw anybody in front of John Mullin's house?

A. I heard voices; I heard the voice of John Mullin and then I heard a reply made, and then the flash of pistols. That was right in front of John Mullin's house.

Q. Could you see the parties there?

A. No; I didn't see them.

Q. What occurred immediately after this shooting took place? What did you next see or hear?

A. I heard the men running; they passed us.

Q. What direction?

A. They were going west.

Q. Came past you?

A. Yes, sir.

Q. Could you see them at that time?

A. Yes, sir.

Q. When did you see them?

A. When they passed through the light I was still standing there.

Q. Describe these men as they appeared to you?

A. Yes; they were large men, dressed in dark, had on broad-brimmed hats.

Q. How were their hats on their heads?

A. Kind of pulled down.

Q. Did you know Clyde Mattox at that time?

A. I did. I had seen him. I had had one conversation with

190 him and I had seen him when he was acting as marshal; seen him several times all summer when he was acting as marshal. His mother sent him down to see if I would stay with her.

Q. I will ask you whether or not either of these two men who came running by you was Clyde Mattox?

A. They was not.

Q. Did you see them well as they passed through the light?

A. Yes, sir; I seen them as they passed through the light.

Q. Are you certain neither of them was Clyde?

Mr. ADY. I object to that as leading.

(Objection overruled.)

A. I am certain; yes. The men I seen was not Clyde.

Cross-examination of Josie Rowley by Mr. ADY:

Q. You have stayed consider' at Mrs. Hatch's house; you are very friendly with her; she is an old acquaintance?

A. I can't say extra friendly.

Q. Where did she live before living there?

A. I don't know.

Q. You say she and you are friends; you stayed with them?

A. I am friendly.
Q. You are very friendly with Clyde?
A. Not so extra.
Q. You like him very well?
A. Well, as a friend.
Q. Do you remember Clyde's being arrested down there and being tried before Maj. Monroe on his preliminary examination?
A. Yes, sir.
Q. You was a witness?
A. No, sir.
191 Q. Do you know Soper?
A. Yes, sir.
Q. Do you know Joe Thompson?
A. No.
Q. Do you know Jim Thompson?
A. Yes.
Q. Did you—Soper and Thompson go and see you that day, and Tom Whitman?
A. Yes.
Q. While that examination was going on?
A. Yes.
Q. Where was you working then?
A. Out west somewhere.
Q. Do you remember telling them there that you didn't know whether it was Clyde or not?
A. I do; I remember because he asked me, and my father told me not to tell what I knew except when I was in the United States court.
Q. What interest had you in the thing?
A. My father had told me not to tell anybody what I was going to testify to in the United States court.
Q. Didn't Soper tell you that he was the United States attorney and that he wanted to find out about it?
A. I don't know that he did.
Q. Didn't he tell you that?
A. Not that I know of.
Q. Didn't you tell him that you were scared so bad that you didn't know?
A. No, sir; I didn't; I have heard several times that I fainted,
192 but I never fainted in my life.
Q. Did you state so to him?
A. I did not.
Q. What did he ask you? Didn't you tell him that you were so frightened that you didn't know who it was?
A. He asked me if I was frightened, and I said, "Yes."
Q. Do you remember this statement in the presence of Jim Thompson in answer to Soper you said that you were so frightened—and Tom Whitman—you said you were so frightened that you didn't know who it was that passed by? And Thompson said, "Yes, she pretty near fainted, and I had her in my arms"?
A. No, sir, I didn't.

W. C. WELLS, a witness on behalf of the defense, being first duly sworn, testifies as follows:

Direct examination by Mr. JOHNSON:

Q. Where do you reside, Mr. Wells?
A. In Oklahoma city.
Q. Where did you reside during the months of July and August last?
A. In Oklahoma city.
Q. Are you acquainted with Mrs. Hatch, the mother of Clyde Mattox?
A. I am.
Q. Were you at that time?
A. Yes, sir.
Q. Were you with Tom Whitman at that time?
193 A. Yes, sir, I was.
Q. Were you present on an occasion in the month of July or August last, in the building in which Mrs. Hatch lived, at a conversation there had between her and Tom Whitman?
A. I was.
Q. I will ask you whether or not in that conversation, Mr. Wells, Whitman said to Mrs. Hatch that he didn't know that it was Clyde Mattox who shot John Mullin, and that he never would say so again, or words to that effect?
A. He said something to that effect; I don't know that he used exactly those words.
Mr. ADY. I don't think that is competent.
By the COURT. If he remembers the statement.
Q. Can you remember the language exactly?
A. Shall I state the——
By the COURT: In the conversation you may state what Whitman said as near as you can.
A. He said that he was not going to swear anymore that it was Clyde Mattox that did this killing, and that he had thought that it was Clyde, but he had seen someone that looked very much like him and had made up his mind that he was mistaken.
Q. I will ask you whether or not at that time or any time in your presence Mrs. Hatch, or anyone else, in your hearing or presence, said to Tom Whitman that if he would not swear against Clyde she would give him $50.00 and a good claim?
By the COURT. Did you lay a good foundation for that?
Mr. JOHNSON. I think Whitman himself did it.
By the COURT. I think not. My recollection is that he did
194 not; this is the first time I have heard the name in the course of the trial.
Mr. JOHNSON. The court is mistaken.
By the COURT. I will not permit the question to go in.
Mr. JOHNSON. Well, your honor——
Q. Mr. Wells, are you acquainted with Thomas Whitman?
A. I know him, yes.
Q. Are you acquainted with the community in which he resides; generally acquainted?
A. Yes, pretty well.

Q. Are you acquainted with the general reputation of Thomas Whitman in that community as to truth and veracity?

A. Nothing except what I have heard; that is what constitutes reputation.

By the COURT. Answer yes or no to that.

A. I have heard——

Q. You have to say yes or no.

A. I only know what I have heard.

By the COURT. Do you know of his general reputation in the neighborhood where he resides for truth and veracity? If you know his general reputation answer yes, and if you do not, answer no.

Mr. JOHNSON. The witness says he only knows what he has heard.

By the COURT. I am instructing; he understands. If he is——

A. I have never heard anything except——

A. Mr. ADY. Wait a moment.

By the COURT. If you know his general reputation you may answer the question yes; if you don't know it you may answer the question.

195 A. I could not say I know all of it.

Q. Do you comprehend and understand what is meant by the question, Mr. Wells?

A. I don't know that I do, fully; I could only tell what I know as to his reputation; I have heard a good deal.

Q. You have got to answer the question whether you know his general reputation before you can be permitted to tell what it is. If you know, say yes; if you don't, say no.

A. I don't know hardly how to answer it.

Mr. JOHNSON. I ask the court to instruct the witness what is meant by general reputation in this connection.

By the COURT. If he is an intelligent witness he can fully understand.

Q. That is all, Mr. Wells.

Mr. JOHNSON. If the court please I desire, if the record sustain my position, I ask permission to recall this witness because he was not permitted to answer.

By the COURT. On the contrary he was instructed to answer.

Mr. JOHNSON. I am speaking in this matter of which your honor said the foundation had not been laid.

J. E. LOVE, a witness on behalf of the defense, being first duly sworn, testifies as follows:

Direct examination by Mr. JOHNSON:

Q. Are your initials J. E.?

A. Yes, sir.

Q. Where do you reside, Mr. Love?

A. In Oklahoma City.

196 Q. Where did you reside in the months of July and August last?

A. In Oklahoma city.

Q. Were you acquainted at that time with Mrs. Hatch?

A. Yes, sir.

Q. Were you acquainted with Thomas Whitman, the witness who has been on the stand?

A. Yes, sir.

Q. Were you, during the month of July or August, present at the residence of Mrs. Hatch, in Oklahoma city, at a conversation had between her and Thomas Whitman?

A. Yes, sir; I was.

Q. Did or not Thomas Whitman, in that conversation, say that he did not know who it was that shot John Mullin, and that he would never swear again that it was Clyde Mattox?

A. He did.

Q. I will ask you, Mr. Love, whether Mrs. Hatch, in your presence, in the presence of yourself and anyone else, at that time and place, or at any other time or place, said to Tom Whitman that, if he would swear in favor of Clyde, or help him, that he should receive fifty dollars and a good claim?

A. Not that I know of.

Q. Was it said in your presence?

A. It was not; no, sir.

Cross-examination of J. E. Love by Mr. ADY:

Q. Mr. Love, what is your business?

A. My business is trading business.

Q. Trading in what line?

197 A. In stock, bank stock, and notes.

Q. How long have you been in Oklahoma city?

A. I came in April of the opening, 1889.

Q. Where did you come from?

A. From Texas.

Q. Clyde is from Texas also, isn't he?

A. I have heard he was.

Q. Did you know him down there?

A. No, sir.

Q. You have taken a great deal of interest in his defense?

A. Not until lately. Lately I have taken some interest in this case.

Q. And you have taken umbrage at Captain Stiles because you thought he was assisting me somewhat, haven't you?

A. Why, I don't know that I have specially any more than in all of his dealings around Oklahoma city.

By the COURT. Simply answer the question; don't go outside.

Q. Do you know a soldier by the name of Myers, here as a witness?

A. Yes, sir.

Q. Have you stated to Myers since the convening of this court that you would make Captain Stiles hunt his hole if Clyde Mattox was convicted?

Mr. JOHNSON. I object to any cross-examination contrary to materiality.

WITNESS. I want to answer it.

Mr. ADY. It is a matter which shows his interest.

By the COURT. He has shown that he has taken an interest.

198 T. M. UPSHAW, a witness on behalf of the defense, being first duly sworn, testifies as follows:

Direct examination by Mr. JOHNSON:

Q. Where do you reside, Mr. Upshaw?
A. In Oklahoma City.
Q. How long have you resided there?
A. Since the opening; something over two years.
Q. What position, if any, do you hold there?
A. City clerk and tax collector.
Q. Are you acquainted with Thomas Whitman, a witness who has testified in this case?
A. Yes, sir.
Q. Are you generally acquainted in the community in which he lives?
A. Yes, sir; I think I know more people than anybody in town.
Q. Are you acquainted with his general reputation in that community for truthfulness?
A. Yes, sir.
Q. Is that reputation good or bad?
A. Very bad.
That is all.

Cross-examination of T. M. Upshaw by Mr. ADY:

Q. Very bad is it?
A. Yes, sir.
That is all.

Dr. N. B. TAYLOR, a witness on behalf the defense, being first duly sworn, testifies as follows:

Direct examination by Mr. JOHNSON:

199 Q. Are your initials N. B.?
A. Yes, sir.
Q. Where do you reside?
A. In Oklahoma City.
Q. How long have you resided there?
A. Nearly—ever since the 23d, off and on.
Q. What position, if any, do you hold there?
A. Member of the council.
By the COURT. Member of the city council?
A. Yes, sir.
Q. Are you acquainted with Thomas Whitman, a witness who has testified here?
A. Yes, sir.
Q. Are you generally acquainted with the community in which he lives?
A. I am.
Q. Do you know what his general reputation in that community is, among those who know him, for truthfulness?
A. It is bad.
Q. Do you know?
A. I do.
Q. Is it good or bad?
A. It is bad.

Cross-examination of Dr. N. B. Taylor by Mr. ADY:

Q. Are you a practicing physician?
A. No, sir.
Q. Did you ever practice medicine?
A. Yes, sir.
Q. Where?
200 A. In Texas.
Q. How long?
A. About twelve years.
Q. Know Clyde Mattox before he came to this town?
A. Yes; I have known him in Texas.
That is all.

B. H. MILLER, a witness on behalf of the defense, being first duly sworn, testifies as follows:

Direct examination by Mr. JOHNSON:

Q. Where do you reside, Mr. Miller?
By the COURT. What is his name?
A. B. H. Miller.
Q. Where do you reside, judge?
A. In Oklahoma City.
Q. What position, if any, do you hold there?
A. I am police judge.
Q. Are you acquainted with Thomas Whitman, the witness who has testified here?
A. I know him.
Q. Are you generally acquainted in the community in which he resides?
A. What is the question?
Q. Are you generally acquainted in the community in which he lives?
A. I am.
Q. Do you know what his general reputation for truth is in that community in which he lives?
A. I do.
Q. Is it good or bad?
201 A. It is bad.
That is all.

Cross-examination of B. H. Miller by Mr. ADY:

Q. How long have you lived in Oklahoma City?
A. Since July, 1889.
Q. Where did you live prior to then?
A. I lived in Texas.
Q. Acquainted with Clyde Mattox down there?
A. I was not, sir.
That is all.

CLYDE MATTOX, defendant in this case, at his own request, being first duly sworn, testifies as follows:

Direct examination by Mr. JOHNSON:

Q. Is your name Clyde Mattox?
A. Yes, sir.

Q. You are the defendant in this case?
A. I am.
Q. State whether or not you were present at, or had anything to do with, the shooting of John Mullin, as has been held here?
A. I did not, sir.
Q. When did you first know, after that time, that you were accused of having killed John Mullin?
A. Well, sir, I read it in the paper at Guthrie.
Q. When?
A. On the Saturday morning after John Mullin was killed.
Q. Do you know what night it was, or did you know from the paper what night it was he was killed?
202 A. The paper stated that it was, I believe, on Thursday night before.
Q. I will ask you to state whether or not you surrendered yourself on this charge.
A. I did.
Q. How long after that time, Clyde?
A. I surrendered about the—somewhere about the fourth or fifth of January; I can not state exactly what day it was; I am not positive.
Q. To whom and where did you surrender?
A. To Dr. T. H. East, Oklahoma City, deputy United States marshal, who testified here.
Q. Something has been said about your escape; explain that.
A. Yes, sir; I did escape. I received a note the night of the escape from mother telling me that we were not going to be allowed——
Mr. ADY. Don't tell.
By the COURT. Never mind that.
Q. You can tell why you went.
A. I went because we were not going to be allowed a preliminary hearing; they were going to take us to jail without any bond. My health was in a delicate state at that time, and I didn't want to go to jail.
Q. How long did you remain away at that time?
A. I never left town.
Q. How long did you remain away from the custody of the officers?
A. Until the 24th of January.
What did you do then?
203 A. I went to Guthrie's office and surrendered to Walker, George.
Q. You have been in custody ever since.
A. I have.
That is all.
[No cross-examination.]
Mr. JOHNSON. The point with reference to Wells, I desire to look up the evidence, and as to the evidence sought to be introduced by the Dr.
By the COURT. The stenographer's recollection is that three names only were mentioned, and I think the stenographer is correct upon that, and the testimony rests where it is upon that question. As to the other, I am entirely satisfied that it would be beyond all possible limit. I don't think there is a case in the books that would allow it. I have given what I consider the furthest possible limit already. I don't think the foundation, if it had been insisted upon, I don't think the testimony

should have gone in at all. I allowed his statement to be made, I allowed it to go in. Of course the reason for the rule you admit you are well acquainted with.

Mr. JOHNSON. It is also a matter of law to be passed upon by the court, pretty near a matter of discussion. I would like to prepare an additional question to be asked of Mrs. Hatch, and let that go in the record with a view of saving the point.

By the COURT. I don't think the foundation was laid at all, if I had been inclined to hold you to technical rules. I have not done so; I have admitted testimony so far which has been for the reason that
204 while I was well aware I was going beyond any decided case, I thought, owing to the importance of the case, I would admit it, but I do not feel warranted in going any further under the facts as they now stand. Where the party is living and can come and testify a proper foundation must be laid.

Mr. JOHNSON. I avowed it.

By the COURT. The ruling would be that the question will not be permitted. To that you have an exception.

(Defendant excepts.)

Mr. JOHNSON. Will the court permit me to prepare a question and submit it to your honor as I did the other and let it go into the record to Mrs. Hatch?

By the COURT. If there is any doubt upon that I have no objection.

Mrs. Hatch recalled and the following question in writing, which was first submitted to the court and which the court ordered incorporated into the record without the question going to the jury:

Q. Did or did not John Mullin say to you on the morning you visited him, and after Dr. Graham had told him that all the chances for life were against him, say to you, "I know Clyde Mattox, your son, and he was not one of the parties who shot me."

(Objected to on the ground of being incompetent. Objection sustained. Defendant excepts.)

Defendant rests.

Plaintiff's rebuttal.

ELISHA HOPKINS by Mr. ADY.

Direct examination by Mr. Ady:

205 Q. Mr. Hopkins, did you have a talk with Tom Whitman directly after this shooting?

A. Yes, sir.

Q. About how many minutes after the shooting?

A. Well, as quick as I could go from Logan's house to where the shooting was at.

Q. Did you see Wolfe around there when you were talking?

A. No, sir.

Q. State whether or not Tom Whitman said to you that evening at any time after the shooting that he did't know who did the shooting?

A. No, sir; he told me——

By the COURT. No matter.

JAMES THOMPSON by Mr. Ady.

Q. You testified as a witness on behalf of the defense a little while ago that you was present, near by, when this shooting took place?

A. Yes, sir.

Q. Who was the girl with you?

A. Miss Rowley.

Q. Sitting over there [pointing to Miss Rowley]?

A. Yes, sir.

Q. When these men ran by in the street where was Lizzie Rowley, or whatever her name is?

A. I never seen them run by; she fainted and I took her to the house.

Q. You didn't see them run by?

A. Not until I had taken her back to the house.

206 Q. When was it she fainted, with reference to the time the shooting was being done?

A. Right immediately.

Q. You carried her back in the house?

A. Yes, sir.

Q. And left her there?

A. Yes, sir; across her mother's bed.

Q. She didn't see them run?

A. No.

Q. Do you remember at the preliminary examination before Monroe, Soper went up to see what this girl knew about this matter; who else went?

A. She went and Whitman.

Q. She went with you?

A. I think so.

Q. Where did you go with Soper?

A. We went to the south end of town, where the shooting occurred.

Q. Yes, and—she went, did she?

A. I think he got her and took her along.

A. On that trip was there any talk about this shooting—about her seeing the man?

A. I don't remember.

P. L. SOPER, a witness on behalf of the prosecution, being first duly sworn, testifies as follows:

Direct examination by MR. ADY:

Q. You were present at the preliminary examination of Mattox before Maj. Monroe?

207 A. I closed the examination; you went away.

Q. After that examination closed did you go, in company with James Thompson and Tom Whitman, to see the witness, Miss Rowley?

A. I did, sir.

Q. Where did you find her?

A. I found where she was and went to the house.

Q. Where did you find her?

A. Found her—I don't know who lived there; it was in a house on the corner; I went out and looked at the ground, and then walked up there; it was three or four blocks, I think. I am not familiar with the town; it was the only time I was in Oklahoma City.

Q. Josie Rowley?
A. That is her name.
Q. Did she say there to you in the presence of Thompson and Whitman that she was so frightened that she didn't see the men who ran by?
A. She did, sir.
That is all.

GEORGE THORNTON, by Mr. ADY.

Q. Mr. Thompson, you testified before to-day, and that you were assistant marshal down there at this time?
A. Deputy marshal; yes, sir.
Q. Were you there constantly from the opening of the town up to this shooting?
208 *Q.* Was I there from the opening until this shooting? Yes, off and on.
Q. And afterwards?
A. Yes, sir.
Q What is the fact as to whether or not there was a great deal of shooting in the town of Oklahoma at nights about that time?
Mr. JOHNSON. I object.
By the COURT. I don't think it is rebuttal.
Mr. ADY. Those persons have testified with regard to this shooting where Mattox was at the time. We all know how easy it is for a party to be mistaken about the particular time of shooting when there is a great deal of shooting taking place in a town. I think that circumstance of their being a great deal of shooting over in the town, they might have been mistaken.
Mr. JOHNSON. Our answer is there is no evidence tending to show that there was any other shooting.
By the COURT. It is not rebuttal; I must decline to admit it.
That is all.

GEORGE THORNTON, by Mr. ADY.

Q. Do you know the witness, Frank Wolfe, who testified on behalf of the defendant?
A. Yes, sir.
Q. How long have you known him?
A. I have had a speaking acquaintance with him since about the opening, I believe; I saw him a time or two before the opening.
209 Q. What is his business, if you know?
A. I have never known him to follow any in Oklahoma City, unless it might be trading in real estate.
Q. Do you know his general reputation for truth and veracity in that community?
By the COURT. Answer that yes or no.
A. Yes, sir.
Q. Is it good or bad?
A. I would consider it bad.
Q. Do you know whether or not there was any indictment for perjury pending against him at the time?
A. I do not know positive; I know that he has been under arrest for perjury.

Examination of George Thornton by Mr. JOHNSON.
Q. In connection with land contests?
A. Yes, sir. I only know that by hearsay
That is all.
Government rests.
Defense rests.
Argument for the prosecution by Mr. Ady.
Argument for the defense by Mr. McMechan.
Argument for the defense by Mr. Johnson.
Argument for the prosecution by Mr. Ady.
Case closed.
And whereupon after the case had been argued by counsel, the court instructed the jury in writing, as follows:

210 TOPEKA, KANSAS, *Nov. 30th*, 1891.

Hon. JOHN A. RINER,
Judge United States District Court, Topeka, Kansas:

DEAR SIR: I hereby certify that I have compared my notes of testimony as official stenographer of the United States district court at Wichita, Kansas, in the case of the United States vs. Clyde Mattox, No. 900, charged with murder, with the report of testimony as prepared by the stenographer who wrote the testimony on behalf of the defendant, and find that the report as prepared by that stenographer is substantially a correct one; that the reports of two stenographers of the same case are not usually such as to exactly correspond. I have made some changes in pencil in the copy which was furnished me. So far as I can see (and I have gone through the testimony from beginning to end, every word being read) the report is a correct one.

H. B. TRACY.

211 In the district court of the United States for the district of Kansas.

THE UNITED STATES
vs.
CLYDE MATTOX.

Charge to jury.

Gentlemen of the jury, the indictment in this case is brought under section 5339 of the Revised Statutes of the United States, which provides "that any person who maliciously strikes, wounds, poisons, or shoots at another person within any place under the exclusive jurisdiction of the United States, of which striking, wounding, poisoning, or shooting such other person dies, shall be deemed guilty of murder." There is no controversy in this case as to the fact that the place in which the offence is alleged to have been committed was a place within the exclusive jurisdiction of the United States, and within the jurisdiction of this court if you find the place to be the place mentioned in the indictment. Hence, if you find from the evidence that an offence has been committed, and that it was at the place mentioned in the indictment, then you are instructed that it was committed at a place within the exclusive jurisdiction of the United States and within the jurisdiction of this court.

Two distinct propositions are submitted under this indictment for your consideration:

First. Was the act itself done; that is to say, was the person alleged to have been killed in fact killed?

Second. Was it done by the defendant in this case?

In other words, there must be proof of the death of the person; that is to say, there must be evidence which satisfies your minds that John
212 Mullin was killed; and, second, that he was killed by this defendant, or that the defendant was present at the time the crime was committed, and consented thereto or took part therein, as will be more fully explained at another place in these instructions.

In the trial of a criminal cause the person accused is entitled to the benefit of the legal presumption of innocence. This, the law gives him, and you in your deliberations must accord him, for it is an inflexible rule of the criminal law that the guilt of the accused must be fully proved. Neither a preponderance of the evidence, nor any weight of preponderant evidence is sufficient for the purpose unless it generate full belief in your minds of the fact to the exclusion of all reasonable doubt..

A reasonable doubt is not a mere possible doubt, for everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. A reasonable doubt is that state of the case which after a comparison and consideration of all the evidence in the case leaves your mind in that condition that you cannot say that you feel an abiding conviction to a moral certainty of the truth of the charge. The burden of proof is upon the prosecution. All of the presumptions of law independent of the evidence are in favor of innocence, and every person is presumed to be innocent until his guilt is established by the evidence. The evidence must establish the truth of the fact to a reasonable and a moral certainty, a certainty which convinces and directs the understanding and satisfies the reason and judgment of those bound to act conscientiously upon it. When the evidence does so satisfy your minds to a reasonable and a moral certainty of the truth of the fact you are satisfied beyond a reasonable doubt. You are the judges of the weight of the evidence and the
213 credibility of the witnesses. It is your duty to harmonize the evidence upon the theory of innocence if that can be done; the facts must be consistent with each other and with the main fact sought to be proved. The circumstances taken altogether must be of a conclusive nature, producing in your minds a reasonable and a moral certainty that the person charged in the indictment committed the offence, or assisted in committing the offence.

The law makes the defendant a competent witness in his own behalf. He may be sworn at his own request and testify as other witnesses in the case. The jury, however, are the judges of the weight which ought to be attached to his testimony, and in considering what weight should be given it you should take into consideration all of the facts and circumstances concerning the case as disclosed by the evidence and give his testimony such weight as you believe it entitled to in view of all the circumstances proved on the trial, and in considering the weight which should be given his testimony, and as bearing upon the question of his credibility, you have a right to take into consideration his interest in the result of the trial.

As stated at the outset, two main propositions will be submitted to you, the first of which was whether or not the person alleged to have been killed was, in fact, killed. Second, whether or not the defendant committed the offence, or that he was present consenting to or aiding in its commission, and in order that you may more fully understand what was meant by being present, aiding, or consenting to the commission of the offence, it may be profitable for me to explain to you at this point the rule by which you are to be guided; a crime may consist of many acts, which must all be committed in order to complete the offence, and the law
214 is that each person present consenting to the commission of the offence, and doing any one act which is an ingredient of the crime, or immediately connected with it or leading to its commission, is as much a principal as if he had with his own hand committed the whole offence. The indictment in this case charges that this defendant, on the 12th day of December, 1889, feloniously, wilfully, and of his malice did kill and murder John Mullin. The time alleged in the indictment, while it is a fact to be shown by the evidence, is not material, except that you must find from the evidence that the offence was committed prior to the finding of the indictment. The indictment also alleges that the killing was maliciously done. This, also, it is necessary for you to find from the evidence before you can return a verdict of guilty, for it is only where the killing is done with malice that it constitutes the crime of murder. Malice, however, may be shown, first, by proof of death; second, that the death of the person alleged to have been killed was the result of the use by the defendant of a dangerous or deadly weapon; as, for example, where the killing was done by means of a gunshot or pistol-shot wound, which wound resulted in the death of the deceased. The law is that every man is presumed to intend the consequences of his acts. Hence, if it is shown by the evidence that the person alleged in the indictment to have been killed is in fact dead, and that he came to his death by means of a gun or pistol-shot wound, the presumption is, and the presumption is conclusive if unexplained, that the person who caused the death did it maliciously. Hence, if you find from the evidence in this case that the deceased came to his death at the hands of this defendant in the manner and by the means charged in the indictment, then you are instructed in the absence of any satisfactory explanation, that the presumption of law is that
215 it was done with malice, and the Government, in its proof of the allegation of malice mentioned in the indictment, need go no further than to show that fact.

There seems to be no conflict in the evidence in this case as to the fact that John Mullin was killed at the time mentioned in the indictment and that he came to his death by means of a pistol-shot wound inflicted upon his person at the hands of some one, and while, as already suggested, these are matters which you must be satisfied of, I call your attention to the condition of the evidence as it occurs to me in order that you may more speedily reach the consideration of what seems to me to be the only remaining question in the case, namely: Did John Mullin come to his death, in the manner and by the means charged in the indictment, at the hands of this defendant, or was the defendant present consenting and aiding in the commission of the offence at the time Mullin was killed? While all of the propositions mentioned are matters which you must determine, and the

whole question is left for your determination, yet, it seems to me, that the last one suggested in the only one about which there is any conflict in the evidence in this case. The evidence in the case consists of what is known in the law as positive evidence, that is, testimony of eyewitnesses, coupled also with some circumstances occurring soon after the alleged killing of Mullin bearing upon the question of the identity of the defendant. Circumstantial evidence is legal evidence, and is to be considered by the jury in connection with all of the evidence given upon the trial of the case. The entire evidence, both positive and the circumstances proved on the trial, should be fully considered by the jury, and after a careful consideration of all the evidence, if you are satisfied to a reasonable and a moral certainty that the defendant in this case committed the offence charged in this indictment, your duty is plain under the law to say so by your
216 verdict of guilty, for the law exacts a conviction where there is legal evidence to show the guilt of the defendant beyond a reasonable doubt, and if the proof in this case so satisfies your minds, you have no discretion and no dispensing power under your oaths. The law is your only guide to your verdict. You are not to look at its consequences, nor the punishment which may result. You find only whether or not an offence has been committed such as is defined in the law. It is for the legislative department of the Government to prescribe the punishment of offences, and it is not for you or for the court to arraign their justice or wisdom in performing our respective duties in the administration of justice. We must go in the safe road prescribed by the laws as their exp'unders, but without assuming the power to repeal, alter, dispense or annul, their provisions. We can not vary the rules of evidence in their application to offences of a greater or less degree; they are the same regardless of the question of punishment. No man can be convicted of a criminal offence except upon clear and satisfactory proof of guilt. The evidence must be the best *of* the nature of the case and the ability of the party admits of, and the law must meet the evidence and the case. If, in the opinion of the jury, a case is here made out, it is your duty to so find. The juror violates every duty if, when his reason and judgment are entirely convinced of the guilt of the accused, he acts against such conviction from feelings of humanity arising from the nature of the punishment which may follow a verdict of guilty. The law and the evidence only are to be considered by you in arriving at your verdict. Appeals are frequently made in trials of criminal cases to the feelings of jurors to induce them to be influenced by other considera-
217 tions than such as grow out of the law and the evidence. Such appeals must be listened to with caution, for your oath as jurors makes the law your only guide to your verdict.

The questions then to be considered by you are:

First. Is the person alleged in the indictment to have been killed in fact dead?

Second. Did he come to his death in the manner and by the means described in the indictment?

Third. Was the offence committed at the place alleged in the indictment?

Fourth. Did this defendant commit the offence or assist at its commission?

If, after a consideration of all the evidence in this case, you can answer the questions in the affirmative, your duty is plain to say so by your verdict of guilty. If, on the other hand, you have a reasonable doubt as to either of these propositions arising in your minds from the consideration of the evidence in the case, you must acquit, but the doubt must be a reasonable doubt, that is an honest doubt arising from the consideration of all of the evidence in the case. It must not be a doubt about the policy, justice, or binding power of the law, or in any way growing out of the degree of the punishment which may follow a conviction.

With these instructions as to the law, the case is submitted to you.

(Endorsed:) 900. United States vs. Clyde Mattox. Instructions filed Oct. 7th, 1891. J. C. Wilson, clerk.

To which instructions and to the whole of them and to each instructions separately the said defendant, by his counsel, then and there excepts, and still excepts.

218 And afterwards said jury returned a verdict finding the said defendant guilty as charged in the indictment, which verdict is in words and figures as follows:

219 In the district court of the United States for the district of Kansas.

UNITED STATES
vs.
CLYDE MATTOX. } No. 900.

We, the jury in the above-entitled cause, duly empaneled and sworn upon our oaths, do find the defendant, Clyde Mattox, guilty as charged in the indictment.

J. P. HALL,
Foreman.

(Endorsed:) No. 900. The United States vs. Clyde Mattox. Verdict filed October 8th, 1891. J. C. Wilson, clerk. By J. F. Shearman, D. C.

And afterwards, at said September term, 1891, the defendant filed his motion for a new trial in words and figures as follows:

220 UNITED STATES OF AMERICA,
District of Kansas, ss.:

UNITED STATES OF AMERICA
vs.
CLYDE MATTOX. } Indictment: Murder.

Motion for a new trial.

Comes now the defendant in the above-entitled cause and moves the court to set aside the verdict herein and grant a new trial in this case, and assigns as reasons therefor the following:

1st. The verdict is not sustained by sufficient evidence.

2d. The verdict is against the evidence.

3d. The court erred in the rejection of the testimony of the witnesses, Dr. Samuel Graham and Mrs. S. W. Hatch, offered on the part of the defendant, in refusing to permit the witness, Graham, to answer the following question, propounded by the defendant, to wit: "Did or did not John Mullin, in your presence and at that time, say in reply to a question of Mrs. Hatch, "I know your son, Clyde Maddox, and he did not shoot me. I saw the parties who shot me, and he was not one of them." And in refusing to permit the witness, Mrs. S. W. Hatch, to answer the following question, propounded by the defendant: "State whether or not John Mullin, on the morning of his death, and while you were present with him with the witness, Dr. Graham, and after the doctor had informed him that all the chances for life were against him, in answer to a question propounded by you, say: "I saw the parties who shot me, and I did not know them. I know your son, Clyde Mattox, and he was not one of the parties who shot me."

4th. Surprise to the defendant in testimony offered on the part of the Government, to wit, the testimony of Charity Whitman, wherein she testified that she was present at the shooting of the deceased, and there recognized this defendant as one of the parties who did the shooting, whereas the said Charity Whitman was sworn and testified as a witness on
221 the part of the Government in the preliminary examination of the defendant in Oklahoma city, I. T., in the month of Feb., 1890, before Wm. A. Monroe, U. S. commissioner, at which time the said Charity Whitman testified that she was present at such shooting and saw the shooting and the parties who did it, and that she could not recognize this defendant, and did not recognize him as one of the parties who did such shooting. Whereupon the defendant immediately made an application to the court for a subpœnae for Wm. A. Monroe, as a witness in his behalf, the said Wm. A. Monroe being U. S. commissioner, before whom said preliminary examination was held. The court granted said application and caused a subpœna to be issued for said Monroe, but stated that said cause would not be delayed for his appearance. Said Monroe was not reached, and did not appear until after the case was closed and submitted to the jury. If permitted to obtain the testimony of said Monroe, the said Monroe would have testified that said Charity Whitman appeared and testified as a witness before him in the preliminary trial of this case, and then and there testified that the did not recognize either of the parties who did such shooting, and did not recognize this defendant, Clyde Mattox, as one of parties who did such shooting.

5th. The court erred in the admission of testimony against and over the objection of the defendant.

6th. Misconduct of Douglas V. Donelly, the bailiff in charge of the jury. Said misconduct consisted of this, that after the jury had been charged by the court, and after they had retired to consider of their verdict, and while they were deliberating of their verdict, the said bailiff made remarks in the presence and hearing of the jury to the great injury and prejudice of this defendant, said remarks being as follows,
222 "After you fellows get through with this case it will be tried again down there. Thompson has poison in a bottle that them fellows tried to give him." And at another time the said bailiff, referring to the defendant, Clyde Mattox, in the presence and hearing of the jury and

while they were deliberating of their verdict said, "this is the third fellow he has killed."

7th. Misconduct of the bailiff, Douglass V. Donnelly, while in charge of the jury and while the jury were deliberating of their verdict, in allowing said jury or some or one of them to purchase and take to the jury room a newspaper printed in the city of Wichita and known as The Wichita Daily Eagle, of the date of Thursday morning, October 8th, 1891. The said newspaper being purchased and taken to the jury room by a member of the jury, contained a comment upon the case upon which the jury was then deliberating.

8th. Improper conduct of the jury in procuring to be introduced into their room while they were deliberating of their verdict on this case, and having read in their presence and hearing while so deliberating, the comments of the Wichita Daily Eagle, a newspaper printed and published in the city of Wichita, Kansas, in its issue of Thursday morning, October 8, 1891. Said comments of said newspaper introduced into the jury room, and read by them and in their presence and hearing were as follows: "The destiny of Clyde Mattox is now in the hands of the twelve citizens of Kansas composing the jury in his case. If he is not found guilty of murder he will be a lucky man, for the evidence against him was very strong, or at least appeared to be to an outsider. The case was given to the jury at noon yesterday, and it was expected that their deliberations would not last an hour before they would return a verdict. The hour
223 passed and nine more of them with it, and still a verdict was not reached by 10:30 last night, when the jury adjourned and went to their rooms at the Carey. Col. Johnson, of Oklahoma City, defended him, and made an excellent speech in his behalf to the jury. Mr. Ady also made a fine speech, and one that was full of argument and replete with the details of the crime committed, as gathered from the statements of witnesses. The lawyers who were present and the court officers also agree that it was one of the best and most logical speeches Mr. Ady ever made in this court. It was so strong that the friends of Mattox gave up all hope of any result but conviction. Judge Riner's instructions to the jury were very clear and impartial, and required nearly a half hour for him to read them. When the jury filed out, Mattox seemed to be the most unconcerned man in the room. His mother was very pale and her face indicated that she had but very little hope. She is certainly deserving of a good deal of credit, for she has stuck by her son as only a mother can, through all his trials and difficulties, and this is not the first one by any means, for Clyde has been tried for his life once before. He is a youthful looking man, of light build, a beardless face, and a nervous disposition. The crime for which he has just been tried is the killing of a colored man, in Oklahoma City, over two years ago. Nobody saw him do the killing, and the evidence against him is purely circumstantial but very strong, it is claimed by those who heard all the testimony."

9th. The court erred in the admission of testimony offered on the part of the Government and admitted over the objection of the defendant.

Defendant files herewith in support of his allegations herein made
224 affidavit marked Exhibit A & B & C and D, and a copy of said newspaper, The Wichita Daily Eagle, marked Exhibit D.

J. W. JOHNSON & WILSON & MCMECHAN,
Attorneys for Defendant.

(Endorsed:) U. S. of America vs. Clyde Mattox. Motion for new trial. Filed Oct. 9th, 1891. J. C. Wilson, clerk, by J. F. Shearman, D. C. J. W. Johnson & Wilson & McMechan.

The following affidavits hereto attached and marked Exhibits A and B and C and D, and a copy of the Wichita Daily Eagle, marked Exhibit E, were offered in open court by the defendant in support of his motion for a new trial and by the said district court excluded; to which ruling the defendant, by his counsel, then and there excepts and still excepts.

225 EXHIBIT B.

In the district court of the United States, district of Kansas.

UNITED STATES OF AMERICA
vs.
CLYDE MATTOX. } Indictment—Murder.

UNITED STATES OF AMERICA,
District of Kansas, ss:

A. E. Snyder, of lawful age, being first duly sworn, says: That he is one of the jurors who were impanelled and sworn to try the case of the United States against Clyde Mattox; that one Douglas V. Donnelly was the bailiff in said court and had charge of the jury in said case; that after said cause had been heard and submitted to said jury and while they were deliberating of their verdict, said Douglas V. Donnelly who then had charge of the jury, as bailiff, in the presence and hearing of the jurors or a part of them, speaking of the case, said: "After you fellows get through with this case it will be tried again down there. Thompson has poison in a bottle that them fellows tried to give him." And at another time, in the presence and hearing of said jury or a part of them, referring to the defendant, Clyde Mattox, said, "This is the third fellow he has killed."

A. E. SNYDER.

Subscribed hnd sworn to before this 9th day of Oct., 1891.
[SEAL.] THOMAS HOSS,
Notary Public.

My commission expires March 18, 1895.

226 EXHIBIT D.

In the district court of the United States, district of Kansas.

UNITED STATES OF AMERICA
vs.
CLYDE MATTOX. } Indictment—Murder.

UNITED STATES OF AMERICA,
District of Kansas, ss:

J. A. Scandrelt, of lawful age, being first duly sworn, says that he is one of the jurors who were impanelled and sworn to try the case of the United States against Clyde Mattox; that one Douglas V. Donnelly was the bailiff in said court and had charge of the jury in said case; that after

said cause had been heard and submitted to said jury and while they were deliberating of their verdict, said Douglas V. Donnelly, who then had charge of the jury, as bailiff, in the presence and hearing of the jurors, or a part of them, speaking of the case, said: "After you fellows get through with this case it will be tried again down there; Thompson has poison in a bottle that them fellows tried to give him." And at another time, in the presence and hearing of said jury, or a part of them, refering to the defendant, Clyde Mattox, said, "This is the third fellow he has killed.

J. A. SCANDRELT.

Subscribed and sworn to before me this 9th day of Oct., 1991.

[SEAL.] THOMAS HOSS,
Notary Public.

My commission expires March 18, 1895.

227 EXHIBIT C.

In the district court of the United States, district of Kansas.

UNITED STATES OF AMERICA
vs.
CLYDE MATTOX. } Indictment, murder.

UNITED STATES OF AMERICA,
District of Kansas, ss:

F. B. Hoyt, of lawful age, being first duly sworn, says that he is one of the jurors who were impaneled and sworn to try the case of the United States of America against Clyde Mattox; that one Douglas V. Donnelly was a bailiff in said court and had charge of the jury in said case; that after said cause had been heard and submitted to said jury and while they were deliberating of their verdict the said Douglas V. Donnelly, at that time in charge of the jury as bailiff, in the presence and hearing of the jurors or a part of them, speaking of the case said, "After you fellows get through with this case it will be tried again down there. Thompson has poison in a bottle that them fellows tried to give him."

F. B. HOYT.

Sworn to before me and subscribed in my presence this 9th day of Oct., 1891.

[SEAL.] THOMAS HOSS,
Notary Public.

Term expires March 18, 1895.

228 EXHIBIT A.

In the district court of the United States for the district of Kansas.

UNITED STATES OF AMERICA
vs.
CLYDE MATTOX.

F. B. Hoyt, A. E. Snyder, T. B. Hoyt, D. J. Davis, J. A. Scondrett, J. P. Hall, R. J. Herrin, Samuel Booth, being each duly sworn, depose and say that they were each one jurors duly impanneled and sworn to try the case of the United States of America against Clyde Mattox; that after said

cause had been submitted to the jury and while the jury were deliberating of their verdict and before they had agreed upon a verdict in the case, a certain newspaper printed and published in the city of Wichita, Kansas, known as The Wichita Daily Eagle, of the date of Thursday morning, October 8, 1891, was introduced into the jury room; that said paper contained a comment upon the case under consideration by said jury, and that said comment upon said case so under consideration by said jury, was read to the jury in their presence and hearing; that the comment so read to said jury is found upon the fifth page of said paper, and in the third column of said page, and is as follows:

The Mattox case.—The jury retired at noon yesterday and is still out.

The destiny of Clyde Mattox is now in the hands of the twelve citizens of Kansas composing the jury in this case. If he is not found guilty of murder he will be a lucky man, for the evidence against him was very strong, or at least appeared to be to an outsider. The case was given to the jury at noon yesterday, and it was expected that their deliberations would not last an hour before they would return a verdict. The
229 hour passed and nine more of them with it, and still a verdict was not reached by 10:30 last night, when the jury adjourned and went to their rooms at the Carey. Col. Johnson, of Oklahoma city, defended him, and made an excellent speech in his behalf to the jury. Mr. Ady also made a fine speech and one that was full of argument and replete with the details of the crime committed as gathered from the statements of witnesses. The lawyers who were present and the court officers also agree that it was one of the best and most logical speeches Mr. Ady ever made in this court. It was so strong that the friends of Mattox gave up all hope of any result but conviction. Judge Riner's instructions to the jury were very clear and impartial, and required nearly half an hour for him to read them. When the jury filed out, Mattox seemed to be the most unconcerned man in the room. His mother was very pale and her face indicated that she had but very little hope. She is certainly deserving of a good deal of credit for she has stuck by her son, as only a mother can, through all his trials and difficulties, and this is not the first one by any means, for Clyde has been tried for his life once before. He is a youthful-looking man of light build, a beardless face, and a nervous disposition. The crime for which he has just been tried is the killing of a colored man in Oklahoma city over two years ago. Nobody saw him do the killing and the evidence against him is purely circumstantial, but very strong, it is claimed, by those who heard all the testimony.

F. B. HOYT.
A. E. SNYDER.
D. J. DAVIS.
J. A. SCANDRETT.
J. P. HALL.
R. J. HERRIN.
SAMUEL BOOTH.

Subscribed and sworn to before me this 9th day of Oct., 1891.
[SEAL.] THOMAS O. HOSS,
Notary Public.

My commission expires March 18, 1895.

230 And afterwards said defendant filed his motion in arrest of judgment in words and figures, as follows:

231 In the district court of the United States for the district of Kansas.

U. S. OF AMERICA
vs.
CLYDE MATTOX. } Indictment, murder.

Motion in arrest of judgement.

Comes now the defendant herein, by his attorneys, and moves the court to arrest the judgement for the following reasons, to wit:

1st. Because the court has no jurisdiction of the cause of action.

2d. Because the grand jury had no legal authority to inquire into the offenses charged, for the reason that it was not within the jurisdiction of the court.

3d. That the facts stated in the indictment do not constitute a public offense.

J. W. JOHNSON and
WILSON & MCMECHAN,
Att'ys for Def't.

(Endorsed:) 900. U. S. of America vs. Clyde Mattox. Motion is arrest of judgement. Filed Oct. 9th, 1891. J. C. Wilson, clerk. By J. F. Shearman, D. C. Johnson & Wilson & McMechan.

And said motion for new trial and in arrest of judgement were respectively overruled, to which rulings and decision said defendant duly excepted, and to the order made by said court overruling said motions and exceptions thereto were duly entered of record on the journals of said court.

232 And inasmuch as the said several matters so produced and given in evidence on the part of the plaintiff, the United States of America, and as the question as to the competency of said witnesses and each of them to testify, and to the exclusion of testimony offered on the part of the defendant, and as the said instructions so given by said court to the jury at said trial, and the affidavits offered on the part of the defendant to sustain his motion for new trial, which were not permitted to be read in support of said motion, and the objections and exceptions thereto made by said Clyde Mattox, defendant, by his said counsel, do not appear of record in said cause, that said counsel for said defendant do now present this bill of exceptions to the judge of said court before whom said cause was tried, and within the time allowed by the court for that purpose, and requests that the same may be signed and allowed and made a part of the record herein, all of which is done as prayed for this second day of December, 1891.

JOHN A. RINER, *Judge.*

(Endorsed:) No. 900. United States of America vs. Clyde Mattox. Bill of exceptions. Filed Dec. 2, 1891. J. C. Wilson, clerk.

233 UNITED STATES OF AMERICA, *District of Kansas, ss:*

I, J. C. Wilson, clerk of the district court of the United States for the district of Kansas, do hereby certify the foregoing to be a true, full, and perfect copy of the bill of exceptions filed in said court in case No. 900, the United States of America vs. Clyde Mattox, charged with murder.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Topeka, in said district of Kansas, this 8th day of Dec., A. D. 1891.

[SEAL.]

J. C. WILSON,
Clerk.

234 U. S.
vs.
CLYDE MATTOX. } No. 900.

Copy of petition for writ of error and assignment of errors.

235 In the district court of the United States of America for the district court of Kansas.

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.
CLYDE MATTOX, DEFENDANT. } No. 900. Indictment for murder.

To the honorable the Justices of the Supreme Court of the United States:

Your petitioner, Clyde Mattox, most respectfully represent, that in a certain criminal cause tried and determined in the district court of the United States for the district of Kansas, holden in the city of Wichita, Kansas, at the September term, 1891, and your petitioner was defendant. Your petitioner, Clyde Mattox, was by the verdict of a jury and the judgment of said district court convicted of murder, alleged to have been committed within that part of the Indian Territory lying north of the Canadian River and east of Texas and the one hundred meridian not set apart and occupied by the Cherokee, Creek, and the Seminole Indian tribes, on the 12th day of Dec., 1889, as charged in the indictment, found and preferred against your petitioner; and petitioner was by the judgement of said court sentenced to suffer death for said supposed offense, and your petitioner is still under such sentence.

And your petitioner further represents that there are manifest errors in the record and proceedings, which errors are specifically assigned and numbered and hereto numbered and hereto appended.

And your petitioner desires that said errors may be examined and corrected by your honors, and that your honors may adjudge what of right and according to the laws and customs of the United States should be done therein in the premises.

236 Wherefore, your petitioner prays that your honors may award and issue a writ of error from your honorable court directed to the honorable judge of said district court of the United States for the district of Kansas, commanding him to send your honorable court the record and

proceedings aforesaid with all things concerning the same, together with said writs, and that your honorable court may examine and correct the same and pronounce judgement thereon as is right and proper.

CLYDE MATTOX, *Petitioner.*
By J. W. JOHNSON and
T. F. MCMECHAN, *His Attorneys.*

237 *Assignment of errors.*

In the above-entitled proceedings in error for the district court of the United States of America of the district of Kansas.

The petitioner, Clyde Mattox, makes the following assignment of errors:

First. The said district court erred in the rejection of the testimony of the witness, Dr. Samuel Graham, offered on the part of the defendant in refusing to permit the said witness, Graham, to answer the following question propounded by the defendant's counsel, to wit:

"Did or did not John Mullin, in your presence and at that time, in reply to the question of Mrs. Hatch, I know your son, Clyde Mattox, and he did not shoot me, I saw the parties who shot me and Clyde was not one of them." To which ruling of the court the defendant excepted and still excepts (transcript, pages 156–160).

Second. The said district court erred in the rejection of the testimony of the witness, Mrs. Hatch, offered on the part of the defendant in refusing to permit the said witness, Mrs. Hatch, to answer the following question propounded by the defendant's counsel, to wit:

"Did or did not John Mullin say to you on the morning you visited him and after Dr. Graham had told him that all the chances for life were against him, say to you, I know Clyde Mattox, your son, and he was not one of the parties who shot me." To which ruling of the court the defendant then and there excepted and still excepts (transcript, page 122).

Third. The said district court erred in overruling defendant's sixth and seventh grounds as alleged in defendant's motion for a new trial in this, that it charged the misconduct of Douglas B. Donelly, the sworn
238 bailiff, who had the jury in charge, said misconduct consisted in this, to wit: That after the jury had been charged by the court and after they had retired to consider of their verdict and while they were deliberating on their verdict, the said bailiff made remarks in the presence and hearing of the jury to the great injury and prejudice of the said defendant, Clyde Mattox, said remarks being as follows:

"After you fellows get through with this case, it will be tried again down there. Thompson has poison in a bottle that them fellows tried to give him." And at another time said bailiff, referring to the defendant Clyde Mattox, in the presence and hearing of the jury and while they were deliberating of their verdict, said, "This is the third fellow he has killed." And in permitting the said jury, or some one of them, to purchase and take to the jury room a newspaper containing a comment upon the case upon which the jury was then deliberating (transcript, pages 198, 199). To which ruling the defendant, by his counsel, then and there excepted and still excepts.

Fourth. The said district court erred in overruling the defendant's eighth ground, as alleged in his motion for a new trial, which charges mis-

conduct of the jury while they were deliberating of their verdict, and having read in their presence and hearing while so deliberating a newspaper known as the Wichita Daily Eagle, of the date of Thursday, October 8th, 1891, said paper containing a comment upon the case which was then being considered by said jury. To which ruling the defendant, by his counsel, then and there excepted and still excepts.

Fifth. That the court erred in excluding from consideration the affidavits of A. E. Snyder, J. A. Scandrett, and F. B. Hoyt, jurors, in support of the sixth and seventh grounds of defendant's motion for a new trial,
239 which said grounds charged misconduct of the bailiff who had the jury in charge, and while they were deliberating on their verdict.

To which ruling of the court the defendant by his counsel then and there excepted. (Transcript, pages 202–204.)

Sixth. The said district court erred in excluding the affidavits of F. B. Hoyt, A. E. Snyder, D. J. Davis, J. A. Scandrett, J. P. Hall, R. J. Harrin, and Samuel Booth, jurors, offered in support of the eighth ground as set out in defendants motion for a new trial (transcript, pages 205, 206), to which ruling the defendant then and there excepted.

Seventh. The said district court erred in overruling defendants motion for new trial. (Transcript, pages 197–200.) To which ruling of the court the defendant then and there duly excepted and still excepts.

Eighth. The said district court erred in overruling the motion in arrest of judgement (transcript, page 208), each of the several grounds therein stated presented matter sufficient to support said motion.

Respectfully submitted,

CLYDE MATTOX,
By J. W. JOHNSON and T. F. MCMECHAN,
His Attorneys.

(Endorsed :) No. 900. U. S. vs. Clyde Mattox. Petition for writ of error and assignment of errors. Filed Dec. 2d, 1891. J. C. Wilson, clerk. J. W. Johnson & T. F. McMechan, attys. for deft.

240 UNITED STATES OF AMERICA,
District of Kansas, ss:

I, J. C. Wilson, clerk of the district court of the United States of America, for the district of Kansas, do hereby certify the foregoing to be a true, full, and perfect copy of the petition for a writ of error and assignment of errors, in case No. 900, The United States of America vs. Clyde Mattox, charged with murder, with all the endorsements thereon.

In testimony whereof; I have hereunto set my hand and affixed the seal of said court at my office in Topeka, in said district of Kansas, this 8th day of Dec., 1891.

[SEAL.] J. C. WILSON,
Clerk.

241 UNITED STATES OF AMERICA, ss:

The President of the United States, to the honorable the judge of the district court of the United States for the district of Kansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said district court, before you, between